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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 CEFERINO ADONIAS, a/k/a
4 "Steven Diaz," et al.,

Plaintiffs,

5 v.

16 Civ. 7266 (LTS)

6
7 AL HORNO LEAN MEXICAN 57,
8 INC., d/b/a "Al Horno Lean
Mexican Kitchen," et al.,

Trial

9 Defendants.

10 -----x

11 New York, N.Y.
12 January 23, 2018
9:00 a.m.

13 Before:

14 HON. LAURA TAYLOR SWAIN,

15 District Judge

16 APPEARANCES

17 MICHAEL FAILLACE
18 Attorney for Plaintiffs
19 BY: COLIN MULHOLLAND

20 ANDREW S. HOFFMANN
Attorney for Defendants

21 Also Present: Selva Nebbia
22 Matilde deFerrari
23 Interpreters (Spanish)
24 Kaylynn Wong, Paralegal
25

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(Trial resumed)

THE COURT: Good morning. Please be seated.

Is there anything that we need to address before we resume with the cross-examination of Mr. German Mercenario?

MR. MULHOLLAND: Yes, your Honor.

I'd like to ask the Court for more time over the six-hour limit that I expressed in my letter, to try and use the full seven and a half hours that the individual rules provide for. The testimony is taking a little longer.

THE COURT: You need to use the microphone. You don't have to lean in; just pull it closer to you and speak louder, please.

MR. MULHOLLAND: I'd like to ask the Court for more time to present the plaintiffs' case. I originally submitted a letter to the Court stating I intended to use six hours. The testimony is taking a little bit longer than I expected, and I was hoping I could use the full seven and a half hours the rules provide for.

THE COURT: Mr. Hoffmann, it looked like you were about to stand up. Did you want to say anything here?

MR. HOFFMANN: I'm happy to do my case in six hours, and I take no position regarding the request.

THE COURT: I had originally allocated seven and a half hours. There will be no extensions beyond seven and a half hours, but you may use the time that I had allocated to

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G. Mercenario - Cross

1 you.

2 MR. MULHOLLAND: Thank you, your Honor.

3 THE COURT: All right, then.

4 Mr. German Mercenario, please return to the witness
5 stand. Thank you.

6 GERMAN MERCENARIO, resumed.

7 THE COURT: Mr. Hoffmann.

8 MR. HOFFMANN: Thank you.

9 CROSS-EXAMINATION CONTINUED

10 BY MR. HOFFMANN:

11 Q. Good morning, Mr. Mercenario.

12 A. Good morning.

13 Q. I only have a few more questions.

14 I want to go back to your testimony about some of the
15 equipment that you used when you worked at Al Horno. Did you
16 ever go into the manager's office at the 47th Street store?

17 A. Yes.

18 Q. Did you see the 60 vests that were sitting there that
19 Mr. Pizzimenti purchased when the store was opened for use by
20 all the delivery people?

21 A. No.

22 Q. Did you see any pile or collection of vests that people,
23 that delivery people could use when they were riding their
24 bicycle?

25 A. No, and we were told nothing about that.

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G. Mercenario - Cross

1 Q. Well, where did you get a vest when you were given one?

2 A. I bought one.

3 Q. You were never given one by the store?

4 A. No.

5 Q. Now, you also testified about a helmet. Isn't it true that
6 the store had free helmets for all the delivery people who
7 worked that were provided by Grubhub, and that anybody could
8 use one?

9 A. They never commented about that, nor did I ever receive
10 that helmet.

11 Q. I want to refresh your recollection. These were red
12 helmets that were in the store that are supplied to many
13 delivery -- many small restaurants that have delivery, by
14 Grubhub, as a promotion.

15 A. In my case, I never saw them.

16 Q. Let me ask you. How many delivery people -- in the
17 afternoon, how many delivery people were on duty at 47th Street
18 when you worked there?

19 A. In the afternoon, like six or eight or ten.

20 Q. Wasn't there between 10 and 12 delivery people working in
21 the afternoons when it was busy?

22 A. It could be. I never counted them.

23 Q. OK. Did you ever see any of them wearing a red helmet?

24 A. No.

25 Q. Now, you testified at length yesterday about, I'm going to

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G. Mercenario - Cross

1 call it side work, all the work that you did other than
2 deliveries. Now, have you ever heard that term, "side work"?

3 A. No.

4 Q. All right. You testified about a number of things that you
5 did other than deliveries. Do you remember that? You told us
6 that you had to open up the deliveries to the store and you
7 washed the street and you washed the windows and you took out
8 the trash and you mopped the floors. Do you remember all of
9 that?

10 A. Yes.

11 Q. And you told us that when you worked a long shift, you
12 actually spent 60 percent of your time doing this kind of work
13 rather than deliveries. Do you remember telling us that?

14 A. Yes.

15 Q. And you heard your brother testify yesterday, right?

16 A. Yes.

17 Q. And he said it was, for him, it was 65 percent of his time
18 doing nondelivery work. Do you remember hearing that?

19 A. Yes.

20 Q. So here's my question. Was it just you two that did this
21 kind of work, or did the other ten delivery people that were on
22 in the afternoon have the same duties as you and your brother?

23 A. Well, if I -- in the afternoon, it was -- we were already
24 preparing also for the closing, so if the delivery guys in the
25 afternoon were out, like in somewhere -- or were out and I was

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G. Mercenario - Cross

1 still there and didn't have a delivery, then I would start
2 taking out the garbage. I would start mopping. I would start
3 putting the chairs up, and I would start mopping the lunch area
4 or the eating area, and taking the garbage out.

5 Q. Thank you, sir. I understand what you said, but you didn't
6 really answer my question.

7 You and your brother were delivery people, and you said
8 that you spent the majority of your time doing things other
9 than delivery. What I'm asking you is, was that the same for
10 all of the other delivery people that were employed at the
11 store?

12 A. Yes, the majority had to do some of that work, because you
13 couldn't be seen standing around in that place.

14 Q. So what you're telling us is that the 10 to 12 delivery
15 people that were there in the afternoon, like you and your
16 brother, spent the majority of their time doing work other than
17 delivery; that's your testimony?

18 A. Yes.

19 Q. Thank you.

20 Now, I want to bring you back to the day you came to my
21 office for my deposition. You told a very, very different
22 story about your work duties when you were asked questions in
23 my office under oath, didn't you, sir?

24 A. Yes, but he was intimidating us, and I had to speak as
25 fast, respond as fast as I could.

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G. Mercenario - Cross

1 Q. I'm a little confused. You admit that you gave very
2 different testimony under oath when you were in my office for
3 your deposition?

4 A. Not all of it, no.

5 Q. Did you testify differently in my office about what your
6 duties were when you worked at Al Horno, sir?

7 A. No.

8 Q. So you believe you said more or less the same story that
9 you gave here today?

10 A. Yes.

11 Q. All right. Well, let's refresh your recollection, sir.
12 Let's turn to your, I'm going to read to you from your
13 deposition, starting at page 24, and I'm going to read you some
14 passages, and let's first see if you remember saying that. OK?

15 Starting at line 22, on page 24:

16 "Q. So when you worked a four-hour shift, you made about 15
17 deliveries?

18 "A. Yes, from 11 to 15. Yes.

19 "Q. And when you worked a nine-hour shift, you made 30 to 35
20 deliveries, right?

21 "A. Yes.

22 "Q. So you were pretty busy all day making deliveries, weren't
23 you?

24 "A. Yes, that is why I didn't take my breaks.

25 "Q. Because you were so busy making deliveries, right?

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G. Mercenario - Cross

1 "A. Yes, even though I told them, even though I told them we
2 were not busy, sometimes I wanted to take my breaks and get
3 something to eat, and they just told me to work all the way
4 through."

5 Do you remember testifying to that at your deposition?

6 A. But as I said before, he was yelling at me, and he was
7 intimidating me more, and I had to just answer quickly.

8 Q. I'm sorry. Who was intimidating you?

9 A. You were.

10 Q. So are you telling us that you were intimidated during your
11 deposition, and therefore, you didn't testify truthfully?

12 A. Well, you know, and I -- the thing is that I hadn't seen
13 the paperwork yet, but also, when you asked me about doing,
14 when you said -- when I said I did 30 to 35 in 10 hours, I was
15 just doing a quick multiplication in my mind. If it was 8 to
16 11 in a four-hour shift, then I just multiplied and came up
17 with that figure.

18 Q. Sir, your attorney was present during the deposition,
19 correct?

20 A. Yes.

21 Q. Do you remember your attorney making any objections or
22 making any kind of statement about you being screamed at or
23 intimidated during your deposition?

24 A. I'm not sure.

25 Q. Why aren't you sure?

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G. Mercenario - Cross

1 A. Because I'm not sure. I don't recall.

2 Q. Do you feel intimidated today when I'm asking you
3 questions?

4 A. A bit.

5 Q. Sir, going back to the testimony that was just read to you,
6 you were asked twice -- twice -- if you were busy all day doing
7 deliveries, and both times you said yes. Do you remember that?

8 A. Well, yes, but not that I did 30 to 35 every day, every
9 time, because when I took a look at the books and the records,
10 the maximum I did was 22.

11 Q. Sir, did you answer my questions during the deposition
12 about whether you were busy all day doing deliveries, did you
13 answer that affirmatively because it was true, or were you
14 lying because you were intimidated? Can you please explain?

15 A. Well, when you spoke about the whole day, I thought you
16 were speaking the whole day without a break.

17 Q. Are you saying you didn't -- when I asked you, "So you were
18 busy all day making deliveries, weren't you," are you telling
19 me you didn't understand that question?

20 A. No, and if you'll recall, we also had problems with the
21 translator who was at your office.

22 Q. Did you make any complaints about the translator during
23 your deposition?

24 A. Yes.

25 Q. Who did you make the complaint to, because I didn't hear

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G. Mercenario - Cross

1 any?

2 A. I told my attorney, and I think that's the reason why they
3 brought another translator afterwards.

4 Q. Are you saying there was more than one translator at your
5 deposition?

6 A. Yes.

7 Q. Are you aware that I used the same translator that I used
8 for you for all of the plaintiffs in this case?

9 A. I didn't hear your question.

10 Q. Do you remember if the translator was a man or a woman?

11 A. First it was a woman, then a man.

12 Q. All right.

13 THE COURT: Did you want to ask or consult with
14 Mr. Hoffmann?

15 MR. MULHOLLAND: Yeah.

16 THE COURT: Please.

17 BY MR. HOFFMANN:

18 Q. Let me direct you to another portion of your transcript.
19 Do you remember I asked you about whether you did any work
20 besides deliveries during your deposition?

21 A. I'm sorry?

22 Q. Whether you were asked at your deposition about any work
23 that you did other than deliveries.

24 A. Yes.

25 Q. And do you remember how you answered that question? Did

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G. Mercenario - Cross

1 you explain about breaking down deliveries and cleaning the
2 street and doing the windows and putting the soda away? Did
3 you tell me all about that when I asked you that question at
4 your deposition?

5 A. Yes.

6 Q. You said, you mentioned all those things?

7 A. Yes, because we did those things.

8 Q. OK. Let's go to your transcript again. We'll refresh your
9 recollection, sir?

10 MR. HOFFMANN: And I'm on page 27, line 22:

11 "Q. What duties were you required to perform when you worked
12 at Al Horno in addition to taking out deliveries?

13 "A. Taking garbage out, cleaning the living room/dining room.

14 "Q. Taking garbage out?

15 "A. Yes, taking out the cardboard from the basement and, uh,
16 we needed to clean the hallway that goes into the kitchen.

17 "Q. Anything else?

18 "A. No."

19 Q. Do you remember giving that testimony?

20 A. Yes.

21 Q. Did you forget when you were answering the question about
22 all the other things you told us yesterday that you did?

23 A. No.

24 Q. Well, when I was asking you questions under oath, why
25 didn't you tell me about all those things that you now claim

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G. Mercenario - Cross

1 that you did?

2 A. I told you so.

3 Q. OK. Can you please go through the transcript, and I'd like
4 you to --

5 THE COURT: I don't think there's any testimony he
6 reads English, so unless you have a Spanish version of the
7 transcript --

8 Q. I'm going to represent to you that there is absolutely
9 nothing in the transcript where you mentioned any of these
10 other activities. Can you explain?

11 A. Which ones?

12 Q. Unpacking the deliveries to the store, putting away the
13 soda, cleaning the windows, cleaning the street out in front of
14 the store; all those things you told us about yesterday, sir.

15 A. So I don't really understand your question. What is it
16 that you're telling me?

17 Q. I'm going to move on.

18 Do you remember being asked how long it took you to perform
19 these additional duties when you were working at Al Horno, when
20 you were at your deposition?

21 A. I don't remember.

22 Q. Do you remember telling me that you had to take out the
23 trash at the end of your shift?

24 A. Yes.

25 Q. And you remember you said you had to clean the hallway at

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G. Mercenario - Cross

1 the end of your shift as well, correct?

2 A. Yes.

3 Q. And do you remember telling me that when you finished work
4 at three in the afternoon, you didn't have to do any of these
5 things?

6 A. Well, when I worked until 3 p.m., we had to take out the
7 garbage from the kitchen. We had to sweep the floors and we
8 have to clean the windows, because all the other tasks were
9 done by the people who were in the afternoon shifts.

10 Q. Sir, are you saying that you never told me that when you
11 finished at 3:00, you didn't have to do any of these
12 activities? Did you or did you not say that at your
13 deposition?

14 A. But that was on the last months that I was there, one or
15 two.

16 Q. Sir, did you or did you not say it at your deposition?

17 THE INTERPRETER: I'm sorry?

18 MR. HOFFMANN: Did you or did you not say that at your
19 deposition?

20 A. I said -- oh, actually, when, when we did that, it's
21 actually because Samuel got angry because we did not pay
22 attention to what he would tell us.

23 Q. Sir, I don't mean to be repetitive, but I don't think
24 you've answered my question. Did you or did you not say that?

25 THE COURT: Let her interpret that part.

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G. Mercenario - Cross

1 MR. HOFFMANN: I'm sorry.

2 MR. MULHOLLAND: I would like to say, for the record,
3 I think that Mr. German did answer the question, just an
4 element of the answer wasn't translated at the beginning of his
5 statement.

6 THE COURT: Let's have the question put again.

7 MR. HOFFMANN: I'm going to move on, if that's OK,
8 your Honor.

9 THE COURT: All right.

10 BY MR. HOFFMANN:

11 Q. Are you telling us now that when you left at 3:00, you took
12 the garbage out and put it on the street?

13 A. No. We would put them away in the containers that were in
14 the back of the restaurant.

15 Q. All right. I'm going to read to you again from your
16 transcript, and let's see if we can refresh your recollection,
17 sir.

18 MR. HOFFMANN: I'm on page 31, line 2:

19 "Q. When did you do this, at the end of the shift?

20 "A. Yes.

21 "Q. When you finished work at three, you didn't have to do any
22 of those things?

23 "A. No.

24 "Q. It was only when you worked until 10:00?

25 "A. Yes."

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G. Mercenario - Cross

1 MR. HOFFMANN: No, I didn't ask that question yet.

2 THE INTERPRETER: OK.

3 MR. HOFFMANN: I ended at line 9.

4 THE INTERPRETER: OK.

5 BY MR. HOFFMANN:

6 Q. Now, do you agree that that's what you said during your
7 deposition?

8 A. I agree, but that was in the last, last months.

9 Q. Did you say that at your deposition?

10 A. No, but I'm sure this is what it is, because -- but because
11 I wanted to leave that job, I wasn't earning any money there.

12 Q. You wanted to leave the job, but what does that have to do
13 with the question that I asked you, sir?

14 A. The explanation is that I wasn't paying any attention to
15 Samuel.

16 Q. Thank you for clarifying that.

17 Didn't you also tell me at your deposition that when you
18 worked --

19 A. I have something else to say, and that is when he started
20 treating, started mistreating us, he didn't treat us as real
21 people. He was really very condescending with us and he wasn't
22 treating us right.

23 Q. Thank you, sir.

24 Didn't you also tell me at your deposition that when you
25 worked an 11-hour shift, the only thing you had to do besides

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G. Mercenario - Cross

1 delivery was at the end of your shift, and it took 20 to 25
2 minutes?

3 THE INTERPRETER: Hold on a second.

4 A. The only thing you had to do was at the end of your shift,
5 and it took 20 to 23 minutes?

6 THE INTERPRETER: I'm sorry.

7 MR. HOFFMANN: 20 to 25 minutes.

8 A. Well, that happened at the end of the delivery at 11, but
9 if we arrived at 11 a.m., we had to do different things. Like,
10 we had to maybe do a delivery, then finish what has not been
11 finished, that kind of thing.

12 Q. Mr. Mercenario, I think I'm asking you pretty simple
13 questions, and my question is, did you testify at your
14 deposition that at the end of your shift, when you worked 11
15 hours, the side work that you had to do took 20 to 25 minutes?
16 Did you or did you not say that at your deposition?

17 THE COURT: Are you asking for a yes-or-no answer?

18 MR. HOFFMANN: I am.

19 A. Well, at the end of the night shift, yes, it was a job that
20 took 20 or 25 minutes, but during the shift, we have to do
21 other things, like take the garbage out or clean the windows,
22 that kind of thing.

23 Q. When I asked you at your deposition --

24 "Q. When did you do this, at the end of your shift?"

25 THE INTERPRETER: I'm sorry. Where are you?

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G. Mercenario - Cross

1 MR. HOFFMANN: I'm on page 31, line 2.

2 Q. -- wasn't that during a line of questioning that I had with
3 you about taking out the garbage and mopping? Isn't that what
4 we were talking about?

5 A. Yes, but I was hired to do deliveries. I wasn't hired to
6 clean the restaurant and take the garbage out.

7 Q. Last question, sir. Are you going to stick by your
8 testimony that when you worked the longer shift, you spent 60
9 percent of your day doing work other than making deliveries?
10 And we're here in court; this is your trial. I want to know if
11 that is indeed your final testimony, sir.

12 A. Please, I -- I need the last part of the question, please.

13 MR. HOFFMANN: Can you please read it back to him?
14 Madam interpreter, can you please read it back to him?

15 THE INTERPRETER: Yes, I will.

16 MR. HOFFMANN: Thank you.

17 A. No.

18 Q. Do you want to change your testimony?

19 A. All I know is that when -- the way I thought during the
20 deposition was different than the way I thought after I saw the
21 records, because at the deposition, we were -- I gave you
22 estimates of the time I spent.

23 Q. Sir, you told me yesterday here in open court that you
24 spent 60 percent of your time doing nondelivery work. Do you
25 remember saying that to me?

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G. Mercenario - Cross

1 A. Yes.

2 Q. And you're sticking with that story? That's your final
3 word on the subject?

4 A. Well, if we would count the time you would use to make
5 deliveries and to make nondelivery jobs, you would realize
6 that.

7 Q. Sir, I know -- I'm not sure why you're --

8 THE INTERPRETER: I'm sorry.

9 THE COURT: Wait. Wait, Mr. Hoffmann.

10 MR. HOFFMANN: I'm so sorry.

11 A. So you're asking me if my testimony was true. Well, if you
12 were doing that, what we did, you would understand it. Yeah,
13 that's what I wanted to add.

14 Q. You're sticking with your story about 60 percent, sir?
15 That's a yes-or-no question.

16 A. Well, approximately, from 60 percent to 55 percent, maybe.

17 Q. And that was the same -- last question.

18 And that was true for all the delivery people, right?

19 A. Not for all of them, because some of them left at three.

20 Q. The ones that worked with you -- you already told us this;
21 you said it was the same -- they worked the same way as you and
22 your brother, right?

23 A. Yes, because for instance, if the deliverer had to be
24 cleaning the window today, had to leave, we had to really hurry
25 up and finish that job he was doing.

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G. Mercenario - Redirect

1 Q. Is there a reason that you don't --

2 A. Excuse me. So we all did the same thing.

3 Q. Is there a reason that you won't answer my simple questions
4 with a yes or no?

5 A. So, to answer your questions for yes or no?

6 Q. Thank you, sir.

7 THE COURT: Anything further?

8 MR. MULHOLLAND: Just briefly, your Honor.

9 REDIRECT EXAMINATION

10 BY MR. MULHOLLAND:

11 Q. Mr. Mercenario, do you recall telling Mr. Hoffmann at the
12 deposition that he was screaming loudly?

13 A. Yes.

14 MR. MULHOLLAND: I'd like to read a portion of
15 Mr. Mercenario's deposition for the purposes of rehabilitating
16 his credibility to the extent that Mr. Hoffmann brought up that
17 there may be a lack of notation about the tone of his voice at
18 the deposition, on page 18, line 3 through 11.

19 Q. Mr. Mercenario, I'd like to read this portion to you to
20 refresh your memory:

21 "A. I do not understand.

22 "Q. What do you not understand?

23 "A. You are screaming at me. You are screaming at me, and I
24 cannot hear what you said.

25 "Q. So if I scream at you, you would not be able to hear?

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G. Mercenario - Redirect

1 "A. You are screaming. I am talking at the same time to him,
2 (indicating), so --

3 "Q. We will try to fix that."

4 Remember saying that? Do you remember making that comment
5 in the deposition?

6 A. Yes.

7 Q. OK. Mr. Mercenario, what's your highest level of
8 education?

9 A. I did elementary school, and I never had any problem with
10 anybody, but you know, when people start screaming at me, I
11 start getting nervous, and I cannot answer.

12 Q. How many years did you spend in elementary school?

13 A. Seven.

14 Q. OK. Have you been back to school since then?

15 A. No, only I was held back a few grades.

16 Q. OK.

17 MR. MULHOLLAND: That's all for redirect, your Honor.
18 I would like to ask the Court for one accommodation, if I could
19 have my paralegal, Ms. Maria Cedenio, sit at the table.

20 THE COURT: Yes.

21 MR. MULHOLLAND: Thank you.

22 THE COURT: Mr. Mercenario's testimony is concluded?

23 MR. HOFFMANN: Yes.

24 MR. MULHOLLAND: Yes.

25 MR. HOFFMANN: Thank you.

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Adonias Pacheco - Direct

1 THE COURT: Thank you, Mr. Mercenario.

2 THE WITNESS: Thank you.

3 (Witness excused)

4 THE COURT: Plaintiffs may call the next witness.

5 MR. MULHOLLAND: Plaintiff would like to call

6 Mr. Ceferino Adonias.

7 CEFERINO ADONIAS PACHECO,

8 Plaintiff, called as a witness on his own behalf,

9 having been duly sworn, testified as follows:

10 THE COURT: How do you spell your first name, sir?

11 THE INTERPRETER: The interpreter will -- I did not do
12 it.

13 THE WITNESS: A-D-O-N-I-A-S.

14 THE COURT: Ceferino.

15 THE WITNESS: C-E-F-E-R-I-N-O.

16 THE COURT: Thank you.

17 MR. MULHOLLAND: Thank you, your Honor.

18 DIRECT EXAMINATION

19 BY MR. MULHOLLAND:

20 Q. Mr. Adonias or Mr. Pacheco?

21 A. Pacheco's fine.

22 Q. Mr. Pacheco, did you ever work at a restaurant called Al
23 Horno?

24 A. Yes.

25 Q. OK. And did you work there under the name Marco Steven

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Adonias Pacheco - Direct

1 Diaz?

2 A. Yes.

3 Q. OK. When did you first start working at Al Horno?

4 A. Like at the end of May 2014.

5 Q. Did there come a time when you left Al Horno?

6 A. Yes.

7 Q. Do you recall when that was?

8 A. Like in August 2016.

9 Q. Did you work continuously for Al Horno between May of 2014
10 and August of 2016?

11 A. For a while my schedule changed.

12 Q. I understand that. We'll get to your schedule in a second.
13 I just want to clarify for the Court that you were working,
14 whether or not you were working continuously for Al Horno that
15 entire period of time.

16 A. Yes.

17 Q. OK. When you were hired in May of 2014, who hired you?

18 A. Jimmy Sanchez.

19 Q. OK. Do you know if you were the first generation of
20 employees to work for Al Horno?

21 A. Yes.

22 Q. Do you know when -- which location were you hired at?

23 A. 47th Street and Seventh Avenue -- and Tenth Avenue. Excuse
24 me.

25 Q. Do you know when that location had opened?

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Adonias Pacheco - Direct

1 A. No, because when I got there, it was already open.

2 Q. OK. When you were hired by -- withdrawn.

3 How long did you work with Jimmy Sanchez?

4 A. Four or five months? That I recall.

5 Q. What happened to him?

6 A. No, I don't know. He just didn't show up to the
7 restaurant.

8 Q. OK. Did there come a time when a new manager arrived?

9 A. Not really, because one who replaced Jimmy Sanchez was
10 already working there.

11 Q. Who was the one who replaced Jimmy?

12 A. Ricardo.

13 Q. How long was Ricardo the manager for?

14 A. I think that it was -- well, the time, that I was there,
15 more than a year.

16 Q. Were there any other managers during the time you worked at
17 Al Horno besides Ricardo and Jimmy?

18 A. Samuel.

19 Q. Any other managers?

20 A. Not that I know of.

21 Q. Did you ever hear of a gentleman named Mr. Djibril Zakari?

22 A. Yes.

23 Q. Who is he?

24 A. Well, he would come to the restaurant as a supervisor, but
25 they never gave us information on what he did or why he came to

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Adonias Pacheco - Direct

1 the restaurant.

2 Q. Did you ever have any conversations with him?

3 A. No.

4 Q. When was the -- do you recall when the first time you saw
5 him at the restaurant was?

6 A. I don't recall.

7 Q. Do you recall if he was there in 2014?

8 A. I think so.

9 Q. Do you recall if Mr. Zakari would spend two to three hours
10 at the 47th Street location while you were there?

11 A. Well, I saw him for a while, and I think then he left.

12 Q. What do you mean by a while?

13 A. Well, like I said, I would see him when he'd come, like,
14 supervise, but I wouldn't see him for two or three hours.

15 Q. Did he ever give you orders?

16 A. No.

17 Q. When you were hired in 2014, what was your pay rate?

18 A. \$5 an hour.

19 Q. How was that paid to you?

20 A. In cash.

21 Q. All right. Who told you you would be paid \$5 an hour in
22 cash?

23 A. Jimmy.

24 Q. Did Jimmy ever explain to you why you were being paid less
25 than the minimum wage?

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Adonias Pacheco - Direct

1 A. No.

2 Q. Did there come a time when you were paid in something other
3 than cash?

4 A. After a while, they started paying us with personal checks.

5 Q. OK. Do you recall when that happened?

6 A. Like -- I don't remember. Like, at the end of 2014,
7 approximately.

8 Q. OK. Did there come a time when your pay rate changed from
9 \$5 to something else?

10 A. Yes.

11 Q. How did it change and when?

12 A. Well, they told us that they were supposedly going to pay
13 us 5.65.

14 Q. And when did that happen?

15 A. Like at the end of 2014.

16 Q. OK. Did there come a time when your pay rate changed
17 again?

18 A. Yes.

19 Q. How and when?

20 A. They told us that they were going to pay us 7.50. I think
21 that was already in 2015. I think.

22 Q. OK. How were you paid in 2016?

23 A. Company checks.

24 Q. All right. And what was your pay rate in 2016?

25 A. I think that it showed 7.50. I think.

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1 Q. OK. How did you keep track of your time at Al Horno?

2 A. At the beginning, the managers told us that he kept the
3 schedule.

4 Q. All right. Did there come a time when a machine arrived?

5 A. Yes.

6 Q. Do you recall when?

7 A. Like in August 2014, I think.

8 Q. Could you tell the Court what kind of machine it was and
9 how it worked?

10 A. With a computer, and they'd give us a card for us to put
11 in.

12 Q. Did you use it when you entered and left?

13 A. Yes.

14 Q. All right. So once the machine arrived in August 2016, did
15 you use it faithfully all the way to August -- sorry.

16 When it arrived in 2014, did you use the machine faithfully
17 all the way until August 2016?

18 A. Well, basically when the machine came to scan the card, I
19 would scan the card, but basically sometimes I would forget.

20 Q. OK. Did you use it more or less faithfully?

21 A. Yes.

22 Q. All right. How many times would there be an error with the
23 machine per week?

24 MR. HOFFMANN: Objection.

25 MR. MULHOLLAND: Let me rephrase. That's fine. I'll

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1 rephrase it.

2 Q. How many times per week would you forget to punch in or
3 out?

4 A. Once.

5 Q. OK. Were there ever any problems with the machine?

6 A. Sometimes.

7 Q. How often per month would there be a problem with the
8 machine?

9 A. Four or five times.

10 Q. Have you taken the time during this case to read the --
11 withdrawn, withdrawn.

12 When you first started working in May of 2014, what was
13 your schedule?

14 A. It was from 11 to 3.

15 Q. And what were you hired as?

16 A. To make deliveries.

17 Q. OK. How many days a week did you work when you were first
18 hired?

19 A. Five days.

20 Q. OK. Which five days?

21 A. From Monday through Friday.

22 Q. Did there come a time when your schedule changed?

23 A. Yes.

24 Q. When and how?

25 A. In August of 2014.

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1 Q. And how did it change?

2 A. From 11 to 3 and from 5 to 10.

3 Q. Could you explain what you mean?

4 A. My schedule changed from 11 to 3, and I worked, and I
5 worked all day. I would work from 11 to 3 and then back, come
6 back in from 5 to 10.

7 Q. It would be fair to say you started working two shifts in a
8 day?

9 A. Yes.

10 Q. OK. How long did you have that schedule for?

11 A. Almost a year.

12 Q. Did there come a time when your schedule changed back from
13 11 to 3?

14 A. Yes.

15 Q. OK. And when was that?

16 A. I think it was October 2015. I think.

17 Q. What was your schedule in 2016?

18 A. From 11 to 3.

19 Q. OK. Did the working conditions at Al Horno change markedly
20 in 2016 as compared to the prior years?

21 A. Yes. In 2016, it changed.

22 Q. How?

23 A. They almost didn't have us do things like they had us do on
24 2014 and 2015.

25 Q. OK. So when you first started working -- I want to

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1 redirect your attention to when you first started working in
2 May 2014. OK. Did you make tips?

3 A. Yes.

4 Q. Did you make tips throughout your entire employ with Al
5 Horno?

6 A. Yes.

7 Q. How did the majority of customers pay their tips?

8 A. With a credit card.

9 Q. How did you get your tips?

10 A. At the beginning, they gave us the tips in cash.

11 Q. And later on?

12 A. Later on, by check.

13 Q. How did you -- were you paid the tips on a daily basis or a
14 weekly basis?

15 A. Weekly.

16 Q. All right. How did you keep track of the tips you were
17 entitled to?

18 A. Because every order had a sheet where it, the tip was,
19 appeared, and I would take the sheets and, during my shift, and
20 then at the end of my shift, I would count my tips, add up my
21 tips and then give my sheets to the manager.

22 Q. What sheets?

23 A. The sheets that were attached to each order.

24 Q. OK. And when you did that -- withdrawn.

25 Is it fair to say that you did a daily accounting of the

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1 tips that you would earn based on those sheets?

2 A. Yes.

3 Q. And with who would you do that calculation with?

4 A. With the manager.

5 Q. Which manager?

6 A. First it was Jimmy Sanchez and then Ricardo.

7 Q. OK. Did they ever withhold tips from you that you were
8 entitled -- withdrawn.

9 Did there come a time when any of the management at Al
10 Horno had withheld tips from you?

11 A. Yes.

12 Q. OK. Could you tell the Court how?

13 A. Well, because in a large order, when we had like a \$150
14 tip, the manager would say, Well, I'm only going to give you
15 part of that tip, because he said that he would give the rest
16 to the cooks and to the packers and stuff.

17 Q. How did you know the tip was that big?

18 A. Because in those large orders, the sheet would show the
19 tip.

20 Q. OK. And how did you know the managers withheld some of the
21 tip from you?

22 A. Because they would tell me so.

23 Q. Which managers?

24 A. Ricardo and Samuel.

25 Q. Did you ever complain to anybody, either of them, that that

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1 was unfair?

2 A. I asked them why were they doing that if that was our tips
3 that they, that we, that belonged to us.

4 Q. Did -- OK. And how do you know that the tip wasn't
5 included in your weekly or your daily sum?

6 A. Because I would do my accounting at the end of the shift,
7 and because when we did a large order, they would tell me, I'm
8 not going to give you the whole amount of the tip; I'm just
9 going to give you part. And when I did the accounting, it
10 didn't show up.

11 Q. How many times per week would you do one of these large
12 orders?

13 A. Like three, about.

14 Q. How many times would they withhold your tips from these
15 orders?

16 A. Excuse me?

17 Q. How often would -- I understand you did maybe three orders
18 a week. Would the management withhold tips every time you did
19 a large catering order?

20 A. Yes.

21 Q. OK. What was the average value of the tip on one of these
22 large orders?

23 A. 200, 150 or more.

24 Q. Is that the value of the tip itself or the value of the
25 order itself?

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1 A. Tip.

2 Q. And how much of the tip would you get?

3 A. Well, let's say the order had \$150 tip. Well, they gave
4 us, like, maybe 20. That's just an example.

5 Q. So how much would they typically give you? What percentage
6 of the tip would you typically get from management?

7 A. Well, basically like 10 percent.

8 Q. What was the value -- what was the price of these orders?

9 A. Well, I never really noticed, because my concern was the
10 tip. That was what I was looking for.

11 Q. How big were these orders?

12 A. It was -- they were so large that we had to push a cart to
13 deliver them, and there were times when we also had to carry a
14 backpack with that.

15 Q. How many people would be used to actually transport these
16 orders to the location?

17 A. Well, if one person could take it -- if one could take it,
18 then one would be the only one taking it.

19 Q. Would it ever -- was it always one person, or was it
20 sometimes multiple people involved in carrying these orders?

21 A. Sometimes two.

22 Q. Ever three?

23 A. Not that I know of. I never --

24 Q. Could you describe this cart to the Court?

25 A. Like a little larger than this table.

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1 Q. Did it have multiple shelves?

2 A. Yes, like three.

3 THE COURT: And the record will reflect that at "this
4 table," the witness gestured to the small desk with a sliding
5 shelf that the court reporter's monitor is on.

6 MR. MULHOLLAND: Three and a half meters, two and a
7 half meters?

8 MR. HOFFMANN: I don't know meters.

9 THE COURT: 30 inches, two and a half feet, by two
10 feet or so?

11 MR. MULHOLLAND: About four feet long, appears to be
12 the table. Five feet?

13 THE COURT: Are we talking about the same table?

14 MR. MULHOLLAND: Oh, geez. I thought -- sorry. Looks
15 to be about three and a half feet.

16 THE COURT: All right. That's fine.

17 BY MR. MULHOLLAND:

18 Q. Did there ever come a time when someone delivered an order
19 that had an error in it?

20 A. Yes.

21 Q. And what would happen when that, when a customer complained
22 about the order?

23 A. Oh, well, they would send us back to go deliver it again.

24 Q. Did that have any impact on the amount of tips you got for
25 that order?

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1 A. Yes.

2 Q. How?

3 A. Because the one who took the order first would keep the
4 tip, and whoever was around to make the second delivery, they'd
5 say, Just take this because something was missing. And we
6 would get no tip.

7 Q. OK. Were there any other circumstances where the
8 management would deduct your tips?

9 A. Only with the large orders.

10 Q. OK. Did you ever complain to the owner, Mr. Pizzimenti,
11 about the deductions for large catering orders?

12 A. No.

13 Q. Do you recognize Mr. Pizzimenti?

14 A. Yes.

15 Q. How often was he in the locations where you worked?

16 A. He would come to the restaurant once or twice -- three
17 times or twice.

18 Q. In a day, in a week, in a month, something else?

19 A. A week.

20 Q. And how long did he stay for?

21 A. I have no idea.

22 Q. All right. More than, more than an hour, more than four
23 hours, something else?

24 A. Well, I think maybe an hour.

25 Q. OK. At any time did you -- withdrawn.

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1 When you were first hired, did anyone ever tell you that
2 your tips were being used as an offset for the minimum wage?

3 THE INTERPRETER: The witness is asking for the
4 interpreter to explain a word. Should the interpreter explain
5 the word?

6 MR. HOFFMANN: Offset?

7 MR. MULHOLLAND: I could rephrase.

8 THE COURT: Rephrase the question.

9 MR. MULHOLLAND: Sure.

10 THE COURT: The question will be asked again.

11 BY MR. MULHOLLAND:

12 Q. Did anybody ever explain to you that you were being paid
13 less than the minimum wage because you were making tips?

14 A. No, not that I know of.

15 Q. Did there ever come a time when you were employed that you
16 had a discussion with management about how the tips were used
17 to compensate you for the minimum wage?

18 A. No.

19 Q. OK. Could you turn to Defendants' Exhibit A, page 2, 3 and
20 4. I know they're hard to read.

21 MR. HOFFMANN: Your Honor, I have cleaner copies,
22 because I noticed they were bad. I haven't been able to
23 replicate them, because I just got them this morning, but I
24 have a clean set.

25 THE COURT: All right. I'll ask Mr. Lee to mark that

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1 as the definitive copy of the exhibit.

2 MR. HOFFMANN: Absolutely. I noted when I went
3 through the book that they were really smudged, so I had Chris
4 get us a better set.

5 THE COURT: Mr. Mulholland, if you'll give them to
6 Mr. Lee, he will mark the group as Defendants' Exhibit A,
7 stapled together.

8 MR. HOFFMANN: Thank you.

9 THE COURT: Thank you.

10 MR. HOFFMANN: Your Honor, could we take a bathroom
11 break sometime in the near future?

12 THE COURT: I'd been planning to do it at 11. Would
13 anyone like it to be earlier than that?

14 MR. HOFFMANN: Yes. You get to a certain age, your
15 Honor, when nature calls.

16 THE COURT: We will take a break now and reconvene at
17 10 minutes to 11.

18 MR. MULHOLLAND: Thank you, your Honor.

19 MR. HOFFMANN: Thank you.

20 (Recess)

21 THE COURT: Good morning.

22 Mr. Pacheco, would you please come back to the witness
23 stand.

24 Everyone else can be seated.

25 MR. MULHOLLAND: May I approach?

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1 THE COURT: Yes, you may.

2 BY MR. MULHOLLAND:

3 Q. Mr. Pacheco, please take a look at what's been marked as
4 Defendants' Exhibit A. Do you recognize these documents?

5 A. Yes.

6 Q. Do you see your signature on any of these documents?

7 A. Yeah.

8 Q. Did you sign under the name Marco Steven Diaz?

9 A. Yes.

10 Q. Do you recall when you were presented with these documents?

11 A. That's in the beginning of 2015.

12 Q. Do you remember who gave them to you?

13 A. No.

14 Q. Do you remember the circumstances under which you signed
15 them?

16 A. They simply asked me to sign, and they didn't explain to me
17 why I had to sign.

18 Q. Were you ever given a copy to take home?

19 A. No.

20 Q. When you signed the document, or these documents, was any
21 part of them blank that are now filled out?

22 A. I remember they were, yes.

23 Q. Which parts, if any?

24 A. Basically, I just signed and they would fill out the form
25 themselves.

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1 MR. MULHOLLAND: May I approach the witness to isolate
2 one sheet?

3 THE COURT: Yes.

4 MR. MULHOLLAND: Should we stand close in case he
5 gestures?

6 THE COURT: As long as everyone can see what he's
7 doing, just ask the questions as clearly as you can and we'll
8 then describe it.

9 MR. MULHOLLAND: Sure.

10 Q. Would you take a look at the top sheet there. Do you see
11 the signature beneath yours? Yes?

12 A. Yes, I do.

13 THE COURT: The witness was pointing to the last
14 signature line in the right-hand column of the document, the
15 first page of Exhibit A.

16 Q. Is that the signature of Mr. Zakari?

17 A. I don't know. I didn't see him sign it, but the name is
18 here.

19 Q. Did he present you with this form?

20 A. No.

21 Q. Did he present you with any of the forms that are in
22 Exhibit A?

23 A. I remember it was one of the managers, but I don't recall
24 who it was.

25 Q. Which of the managers might it have been?

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1 A. Maybe Ricardo.

2 Q. Any other manager you had in mind?

3 A. Now that I'm remembering, I think it was Ricardo.

4 Q. What hours would Ricardo be in the restaurant?

5 A. In the shift I had, from 11 to 3, he already was there when
6 I arrived.

7 Q. OK. Before we move away from these documents, see on the
8 first document, the very first one, see the date written, a
9 date written underneath your signature?

10 A. Yes.

11 Q. What date is that?

12 A. June 1, 2014.

13 Q. Who was the manager in June of 2014?

14 A. I think it was Jimmy Sanchez.

15 Q. OK.

16 A. I don't remember exactly.

17 Q. Did he ever give you this document to sign back in June of
18 2014?

19 A. I don't recall.

20 Q. OK. Was Mr. Zakari a manager back in June of 2014?

21 A. No. No, I don't know.

22 Q. OK. I'd like to direct your attention to Defendants'
23 Exhibit I.

24 THE COURT: You'd like him to turn in the book to
25 Defendants' Exhibit I, is that correct?

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1 MR. MULHOLLAND: Yes, please.

2 Q. Do you recognize those documents?

3 A. Yes.

4 Q. All right. Do you see the top one, the first page of
5 Exhibit I? Do you see the top pay receipt there?

6 A. Yes.

7 Q. Are these receipts that you were given every week to sign?

8 A. Yes.

9 Q. All right. Did you, in fact, sign them, many of them, at
10 least?

11 A. Yes.

12 Q. Did you get a keep -- did you get to keep a copy after you
13 signed it?

14 A. No.

15 Q. All right. See the date at the bottom? The top receipt,
16 see the date at the bottom?

17 A. Yes.

18 Q. What date is that?

19 A. 10 -- September 2014, September 3, 2014.

20 Q. OK. Do you always receive a receipt like this to sign that
21 you were paid at Al Horno?

22 A. For a while.

23 Q. Did you always get, have to sign a receipt like this when
24 you got your pay?

25 A. Yes.

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1 Q. All right. When you first started working with Jimmy in
2 May of 2014, did he ask you to sign a receipt to get your pay?

3 A. I don't remember exactly, because in the beginning when I
4 was there, I was paid in cash.

5 Q. Is there any pay receipt in these records that is older
6 than October of 2014?

7 MR. MULHOLLAND: Judge, that's OK. Withdrawn. You
8 don't have to go through the record.

9 Q. Do you know what spread-of-hours pay is?

10 A. Excuse me?

11 Q. Did you know that -- are you aware that when you worked
12 more than ten hours, you're required to stick around to --
13 worked at a job more than ten hours, including a split shift,
14 that your employer's required to pay you an extra hour pay for
15 that day?

16 A. I didn't know that before.

17 Q. OK. When you worked more than ten hours a day or when you
18 had to work a split shift that covered more than ten hours, did
19 they ever pay you an extra hour to cover that time?

20 A. I understood that they would pay me for the ten hours, but
21 I didn't hear about them paying me one extra hour.

22 Q. OK. If we could turn to page 10 in that same exhibit, see
23 the top receipt there?

24 Do you speak English?

25 A. No.

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1 Q. Do you read English?

2 A. No.

3 Q. Were any of these documents provided to you in English?

4 A. Yes.

5 Q. When were these -- these documents were provided to you in
6 Spanish? Withdrawn.

7 MR. MULHOLLAND: What was the question again? I
8 apologize.

9 THE COURT: You asked whether they were provided to
10 him in English. Do you want to rephrase the question?

11 MR. MULHOLLAND: Yes, please.

12 Q. Were any of these provided to you in Spanish?

13 A. Not that I remember.

14 Q. OK. Well, do you see a word there -- Spanish uses the same
15 alphabet as English, correct?

16 A. Yes.

17 Q. The top receipt there, see a word that begins with S-P-R-E?

18 A. Yes.

19 Q. All right. I want you to turn one page ahead, page 9.

20 Before you do that, what's the date of that receipt?

21 A. May 25, 2015.

22 Q. All right. Could you turn ahead one page to page 9? Page
23 9, so back one. Sorry.

24 See the receipt in the middle of the page that's dated
25 5/4/15?

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1 A. Yes.

2 Q. All right. Do you see that English word that begins with
3 an S-P-R-E anywhere on that receipt?

4 A. I don't find it.

5 Q. OK. Do you see in any receipt prior to May, mid-May of
6 2014, that begins with that word S-P-R-E?

7 MR. MULHOLLAND: Let me just make it easier.

8 Q. Go to page 6. Do you see that word in any of the page 6?

9 A. Scheme, that's the word that you were --

10 Q. S-P-R-E. That's the beginning of the word.

11 A. No, I don't find it.

12 Q. Would it surprise you that that word doesn't appear in any
13 of the pay receipts until May of 2015?

14 A. Yes.

15 Q. How often did you work a double shift; how many times a
16 week?

17 A. Every day.

18 Q. How many days a week did you work when you worked a double
19 shift?

20 A. I remember that I worked six days.

21 Q. OK. Did anyone at, any of the management at Al Horno
22 explain to you that you were owed an extra hour for those
23 shifts, those double shifts?

24 A. No.

25 Q. If you could turn to Defendants' Exhibit E. All right. Do

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Adonias Pacheco - Direct

1 you recognize this document?

2 You've seen this before, haven't you?

3 A. Yes.

4 Q. What's the name at the top?

5 THE COURT: Hold on. You have to let him answer.

6 MR. MULHOLLAND: I'm sorry.

7 A. Yes.

8 Q. What is the name at the top of Defendants' Exhibit E-1?

9 A. This is the name I used.

10 Q. OK. So what are we looking at here?

11 A. We are looking at the schedule I worked.

12 Q. OK. So you've taken, you've reviewed this document before,
13 right?

14 A. Yes.

15 Q. Do you recall if it's a more or less accurate, if it more
16 or less accurately reflects the hours that you were working for
17 the time that you were punching in?

18 A. If I remember that exactly?

19 Q. No. More or less.

20 Withdrawn.

21 My question is, after having reviewed this document, like
22 you just told us, can you tell us whether or not it's a fair
23 reflection of the hours that you worked at Al Horno?

24 MR. MULHOLLAND: No. Sorry. Translation issue. Not
25 "exactly"; "more or less."

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1 THE INTERPRETER: I didn't hear the "more or less."
2 I'm sorry.

3 MR. MULHOLLAND: That's all right.

4 THE COURT: Would you put the question again.

5 MR. MULHOLLAND: Yes.

6 Q. Knowing that you've reviewed this document before, could
7 you tell us if this document is more or less a reflection of
8 the hours that you worked at Al Horno?

9 A. Yes.

10 Q. Could you look at the last page? What's the date of the
11 first entry there?

12 A. August 24, 2015.

13 Q. Is that when the machine was available, made available for
14 you to use at Al Horno?

15 A. As far as I remember, yes.

16 Q. OK. Mr. Pacheco, were there any duties that you had to
17 perform at Al Horno that were not deliveries?

18 A. Yes.

19 Q. What were those duties?

20 A. Basically, when I start working there at the beginning of
21 May of 2014, we basically -- what we have to do when we got
22 there, we had to finish the work that the, our coworkers did
23 not finish in the -- our morning coworkers had not finished.

24 Q. What kind of work was that?

25 A. To put away the merchandise that arrived to the restaurant.

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1 Q. What did that entail?

2 A. We had to put away, like, the meat, the soda, the
3 vegetables that arrived at the store. We had to put them
4 away --

5 Q. How long did that take you?

6 A. -- in the refrigerators.
7 20, 25 minutes.

8 Q. Is that something you had to do every time you came at 11
9 or just for that initial period at the beginning?

10 A. Well, it all depended what my coworkers who arrived earlier
11 had not finished.

12 Q. So how often would you have to spend 20 to 25 minutes
13 finishing breaking down the merchandise?

14 A. It was daily, practically.

15 Q. Throughout the entire time you worked at Al Horno or just a
16 limited portion?

17 A. It was during a period of time.

18 Q. What period of time was it?

19 A. 2014 to almost the end of 2015.

20 Q. What changed in 2016?

21 A. They told us that we didn't have to do much of that.

22 Q. Between 2014 and 2015, apart from breaking down the
23 deliveries, were there any other tasks that you had to perform
24 apart from deliveries?

25 A. Sweep, mop up, clean up.

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1 Q. How long would it take you to sweep?

2 A. Well, we did that together, you know. Right after we
3 swept, we start mopping up, and that would take like 20, 25
4 minutes.

5 Q. How many times a day would you do it?

6 A. When we start working -- when I start working.

7 Q. Did you ever have to do it at any other point in the day?

8 A. When I had the day shift, I only did it in the morning.

9 Q. Are there any other tasks you would have to do during the
10 morning shift?

11 A. To put away sodas in the freezer.

12 Q. How long did that take?

13 A. Like 20 minutes.

14 Q. How many times a day would you have to do it?

15 A. During the shift, it would be only once.

16 Q. Why did it take so long to refill the sodas?

17 A. Because the sodas were in the basement, so we had to be
18 taking them upstairs.

19 Q. How big was the refrigerator that housed the sodas?

20 A. I don't have the exact size.

21 Q. All right. Any other tasks you would do in the morning, in
22 the morning tasks, in the morning shift?

23 A. Sometimes to wipe down tables.

24 Q. How long would that take?

25 A. It was fast. It was like ten minutes.

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1 Q. In the wintertime, did you have any other extra tasks?

2 A. They would send us to take out the snow that was out on the
3 street.

4 Q. How long would that take?

5 A. It took from 20 to 25 minutes.

6 Q. All right. Did you have to do anything else with the
7 sidewalk aside from shovel the snow?

8 A. Salt.

9 Q. Salt. What about when it wasn't snowing; is there anything
10 you have to do?

11 A. We would wash it down with a hose. We'd sweep.

12 Q. How long would that take?

13 A. 20 minutes, about.

14 Q. Anything with the windows?

15 A. At times I would clean the windows.

16 Q. How long would that take?

17 A. 15, 20 minutes.

18 Q. The night shift, did you have any other -- during your
19 night shift, did you have any other tasks that you had to do at
20 night, apart from deliveries?

21 A. Well, when we were working nights and the manager noticed
22 that the soda refrigerators were empty, he'd send us to fill
23 them up.

24 Q. How many times a week would you have to do that?

25 A. That was almost daily.

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Adonias Pacheco - Direct

1 Q. All right. How long would that take?

2 A. 20 minutes.

3 Q. All right. Any other tasks during your night shift?

4 A. Right around closing time, around 9:30 to 9:45, we had to
5 clean the area in the dining room; to sweep and mop up.

6 Q. How long did that take?

7 A. 20 minutes, about.

8 Q. Anything with the garbage?

9 A. Yes.

10 Q. What?

11 A. Well, the garbage that had accumulated throughout the day
12 that we had moved out to the garbage containers to the back,
13 now we had to take that garbage out and put it to the front.

14 Q. All right. How long did that take?

15 A. 10 to 15 minutes.

16 Q. How many times a week did you have to do that?

17 A. That was every evening.

18 Q. Now, you gave me a lot of -- you told the Court a lot of
19 different tasks that you would have to do on the morning shift.
20 Were those tasks you would have to do every single day, or did
21 you only have to do some of them some days, all of them all
22 days, or something else?

23 A. Just about every morning.

24 Q. Could you give me a range of the amount of deliveries that
25 you would do during your time at Al Horno?

IlnWadol

Adonias Pacheco - Direct

1 A. In an 11-to-3 shift, the minimum I would do would be about
2 8 deliveries and the maximum would be about 15 to 16.

3 Q. OK. What about the night shift?

4 A. It was just about the same.

5 Q. How many trips would it take you to do, you know, that
6 many -- withdrawn.

7 When you say you did deliveries, did that mean you made a
8 trip out of the restaurant for every single delivery?

9 A. Well, you asked me how many deliveries I did in a day, and
10 I said the minimum was 8 and the maximum was 15.

11 Q. Yes. Yes, I understand. Does that mean you would take a
12 trip out of the restaurant for every single delivery?

13 A. Well, unless they gave us one only to deliver, but that
14 wasn't that frequent.

15 Q. All right. How often would you have multiple deliveries on
16 a trip?

17 A. Four or five times when I would get almost from two to
18 three deliveries.

19 Q. What would be a typical? Can you give us a high and a low
20 of how much time it would take to do a delivery trip?

21 A. Well, it all depends how far you were going. For instance,
22 if I was going real close by, it would take me from five to ten
23 minutes, but it would depend on the distance.

24 Q. Sure. And what would the longest be?

25 A. It would be like 15 to 20 minutes distance-wise.

IlnWadol

Adonias Pacheco - Direct

1 Q. Is that one way or both ways?

2 A. Round trip.

3 Q. Did you ever complain to the manager that you were doing
4 too many nondelivery tasks?

5 A. No.

6 Q. Did you buy anything for -- buy any vests, helmets,
7 bicycles, or anything, to work at Al Horno?

8 A. I bought a bicycle. I bought a lock for the bicycle,
9 lights for the bicycle when I worked at night, and helmet.

10 Q. How much was the bicycle?

11 A. Cost me about \$800.

12 Q. How much were the lights?

13 A. 45, like about 45.

14 Q. How much was the lock?

15 A. I recall that it was like 80, 85.

16 Q. All right. How much was the helmet?

17 A. Seven -- 75, about.

18 Q. Did anyone tell you that you had to buy these things?

19 A. The one in charge told me.

20 Q. Who was the one in charge?

21 A. Jimmy Sanchez.

22 Q. OK. Did you ever ask to be reimbursed for these purchases?

23 A. Did I ask them to reimburse?

24 Q. Yes.

25 A. Well, I never said anything.

IlnWadol

Adonias Pacheco - Cross

1 Q. Did you ask them to be reimbursed or not?

2 A. No, because I didn't know if they would put -- give us that
3 or we had to provide.

4 Q. OK. OK. Do you have receipts for any of these items?

5 A. No.

6 MR. MULHOLLAND: One moment, your Honor.

7 That's all, your Honor.

8 THE COURT: Thank you.

9 CROSS-EXAMINATION

10 BY MR. HOFFMANN:

11 Q. Good morning, Mr. Pacheco.

12 A. Good morning.

13 Q. You had jobs in restaurants before you started working at
14 Al Horno, did you not?

15 A. Yes.

16 Q. And you had jobs after you left Al Horno working in
17 restaurants, right?

18 A. Yes.

19 Q. Now, in the jobs that -- you used the name Marco Diaz when
20 you worked at Al Horno, correct?

21 A. Yes.

22 Q. That's not your real name, is it?

23 A. No.

24 Q. Now, when you worked at places before you were hired at Al
25 Horno, what name did you use?

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Adonias Pacheco - Cross

1 A. My name.

2 Q. Ceferino Pacheco, right?

3 A. Yes.

4 Q. And were those delivery jobs?

5 A. No.

6 Q. You never had a delivery job before you went to work at Al
7 Horno?

8 A. No.

9 Q. And after you left Al Horno, how many restaurants have you
10 worked at?

11 A. In one.

12 Q. And what name did you use at the restaurant that you worked
13 at after Al Horno?

14 A. I don't understand your question.

15 Q. You worked at a restaurant after you left Al Horno,
16 correct?

17 A. Yes.

18 Q. And what name did you give that employer who you worked for
19 after you left Al Horno?

20 A. My name.

21 Q. Ceferino Pacheco?

22 A. Yes.

23 Q. Isn't it true that the only job you've ever had where you
24 used a phony name was at Al Horno?

25 A. Yes.

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Adonias Pacheco - Cross

1 Q. And that is because you and your colleagues planned, when
2 you went to work there, to sue Al Horno to make money for
3 yourselves, correct?

4 A. No.

5 Q. Did anyone at Al Horno tell you that you shouldn't use your
6 real name and you should use a phony name?

7 A. No.

8 Q. Do you still -- you claim that you had to buy a bicycle for
9 \$800 when you joined at Horno?

10 A. I remember that's what I paid for the bicycle.

11 Q. When did you buy it?

12 A. I don't recall.

13 Q. You have no idea when you bought it?

14 A. It was before I start working in Al Horno.

15 Q. How long before you started working at Al Horno?

16 A. I don't recall.

17 Q. Do you still have the bicycle?

18 A. No.

19 Q. What happened to it?

20 A. I sold it.

21 Q. When did you sell it?

22 A. Because I don't do deliveries anymore.

23 Q. Isn't it true that there were helmets that anybody could
24 use, any of the delivery people could use at Al Horno, that
25 were red and had been given to the store as a promotion by one

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Adonias Pacheco - Cross

1 of the companies that does online ordering?

2 A. I never learned of anything about that during the time that
3 I worked there. Maybe now they do, but not back then.

4 Q. Did anyone at Al Horno tell you that you had to buy a
5 helmet?

6 A. Yes.

7 Q. Who told you that?

8 A. Jimmy.

9 Q. Anybody else tell you?

10 A. No.

11 Q. What did he -- did he tell you why you had to buy a helmet?

12 A. No, but it's on account of my safety.

13 Q. All right. I want to ask you some questions about these
14 catering orders. So these were orders that you say the tip was
15 between 150- and \$200?

16 A. Yes.

17 Q. And you say that you personally did three of them a week?

18 A. Yes, that's true.

19 Q. And was it your understanding that all of the other
20 delivery people were also handling about three of these big
21 orders a week?

22 A. Well, yeah, I believe so.

23 Q. You believe so? And you heard your two other plaintiffs,
24 your fellow plaintiffs, they testified that they also handled
25 about three of these orders a week.

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Adonias Pacheco - Cross

1 A. Yes.

2 Q. You heard them say that, didn't you?

3 A. Yes, sir.

4 Q. Let me ask you. Did you and your fellow plaintiffs get
5 together and discuss what you were going to testify to in court
6 before this trial started?

7 A. No.

8 Q. You've never discussed with them, with any of them, the
9 facts of this case?

10 A. No.

11 Q. When you were working at Al Horno, there were about 24
12 delivery people who worked with the store, correct? Does that
13 sound about right to you, sir?

14 A. Almost half of them worked each shift.

15 Q. Were there about 24 delivery people in total?

16 A. I don't know.

17 Q. Do you have an understanding about approximately how many
18 delivery people worked at Al Horno during the period of time
19 that you worked there?

20 A. No.

21 Q. Were there more than 20?

22 A. I never counted.

23 Q. Can you give me your best estimate of how many different
24 delivery people you saw working at the store during the time
25 that you were there?

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Adonias Pacheco - Cross

1 A. Well, when I had just the morning shift, I didn't know how
2 many people worked in the afternoon when I left.

3 Q. During the afternoon, how many delivery people were on
4 duty? Approximately 12 people?

5 A. Yes, from eight to ten, almost.

6 Q. How many were on duty in the morning?

7 A. Eight or nine.

8 Q. Does that compute -- if you add those groups up, is that
9 about 20 people, sir?

10 A. Not quite.

11 Q. How many do you think it is, sir?

12 A. Like 18.

13 Q. It was a six-day operation, right?

14 MR. HOFFMANN: I'll withdraw the question.

15 Q. If there's 18 people and they're all doing three of these
16 mega orders per week, that's about 50 big orders per week; is
17 that your understanding of how many big orders the store was
18 doing per week?

19 A. Well, when I worked in the morning, various -- many orders
20 would go out in the morning. Several orders would go out in
21 the morning.

22 Q. I'm talking about big catering orders where the tip was
23 between -- which were approximately \$200 tips. You did three a
24 week, he did three a week and he did three a week. And if
25 everybody did three a week, that would be about 50 a week,

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Adonias Pacheco - Cross

1 right?

2 A. Well, I believe so.

3 Q. Now, if the tip was \$200, that would mean the bill had to
4 be about \$2,000 to generate a \$200 tip, right?

5 A. Well, I only gave an example. It wasn't always exactly
6 \$200.

7 Q. Well, give me the range on these big catering orders that
8 you think you were shorted on for the tip. What was the
9 average size of the tip that you claim you weren't given? You
10 said earlier this morning between 150- and \$250 tip.

11 A. Yes. That's what I saw with my orders, but I don't know
12 what my coworkers' orders were and what they got.

13 Q. You saw approximately three orders per week where the tip
14 was approximately \$200?

15 A. Yes.

16 Q. Now let me ask you something, sir. Describe how big an
17 order would be to generate a \$200 tip. How much stuff would
18 have to go out of the store?

19 A. Where there would be trays as big as this that would go
20 into the cart. There would be four or five of those.

21 Q. Four or five carts?

22 A. No. Four or five of those large containers.

23 THE COURT: You had indicated a size of the tray or
24 container. Would you make the gesture again, please.

25 THE WITNESS: They were about this size.

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Adonias Pacheco - Cross

1 THE COURT: That's a tray or a deep container?

2 THE WITNESS: Well, in each order, sometimes they'd
3 have these round containers and other containers that were long
4 like this.

5 BY MR. HOFFMANN:

6 Q. Were you able to take out --

7 THE COURT: Well --

8 Q. Would you agree that for an order to generate a \$200 tip,
9 that the order would have to be more than \$1,500 worth of food
10 for someone to give you a \$200 tip?

11 A. Well, depends on the customers who order.

12 Q. But sir, you had the ticket for these orders. You could
13 see how much the order was and how much the tip was, and I'm
14 asking you, what kind of orders, how big do they have to be, to
15 generate a \$200 tip?

16 A. I didn't know -- well, I didn't know the percentage of how
17 much a customer had to spend to generate such a tip.

18 Q. You had no idea what the cost of the orders were -- it was
19 right there in front of you on the ticket -- to generate these
20 big tips?

21 A. No.

22 Q. Sir, it is not true that you did three of these orders a
23 week, is it?

24 A. Yes, it's true.

25 Q. How big is the store? If I told you it was 900 square

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Adonias Pacheco - Cross

1 feet, does that sound about right to you?

2 A. Well, I don't have the exact size of the restaurant.

3 Q. Let me ask you. If you look at this courtroom from the
4 front table to the back, is that about the size of the store,
5 or is it bigger or smaller than that?

6 MR. MULHOLLAND: Objection. I'm not clear what
7 dimensions you're offering.

8 MR. HOFFMANN: I'm talking about from here across this
9 courtroom and to the end of the courtroom.

10 THE COURT: You mean the window behind the witness as
11 opposed to the door of the courtroom?

12 MR. HOFFMANN: No. From here, this way.

13 I withdraw the question.

14 Q. If I told you that the square footage for the store
15 according to the lease is 900 square feet, would you dispute
16 that?

17 A. I don't know.

18 Q. You have no idea?

19 A. No. (in English).

20 Q. Sir, if I told you that that store is lucky to have one
21 order a month that's more than \$1,000, would you dispute that?

22 MR. MULHOLLAND: Objection. Calls for --

23 THE COURT: Speak to Mr. Hoffmann.

24 MR. HOFFMANN: Sure.

25 Q. If I told you that that store, on average, has an order

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Adonias Pacheco - Cross

1 that large less than once a month, would you dispute that?

2 A. Well, I don't know.

3 Q. Sir, if I told you that that store, if every delivery
4 person in that store took out three orders that were more than
5 \$1,000 a week, that Mr. Pizzimenti wouldn't be here; he'd be on
6 a beach someplace zipping a pina colada, would that surprise
7 you?

8 MR. MULHOLLAND: Objection.

9 MR. HOFFMANN: I withdraw the question.

10 THE COURT: Thank you.

11 BY MR. HOFFMANN:

12 Q. These huge catering orders that you did three a week, can
13 you tell me any customer that you made a delivery to during the
14 two years that you worked at Al Horno, where you delivered one
15 of these catering orders?

16 THE INTERPRETER: I'm sorry. If I'm interpreting, I
17 can't hear you.

18 THE COURT: Yes.

19 MR. HOFFMANN: Sorry.

20 THE COURT: Rephrase and make it less compound.

21 MR. HOFFMANN: Yes.

22 Q. Can you tell us the name of any customer that you delivered
23 one of these big catering orders to during the time you worked
24 at Al Horno?

25 A. Why are you asking me that? I never knew the names of the

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Adonias Pacheco - Cross

1 customers.

2 Q. Fair enough.

3 Can you tell me the addresses where you delivered any of
4 these big catering orders to?

5 A. I don't remember, sir, all the addresses any longer.

6 Q. You can't remember a single one?

7 A. One could be 1370 Sixth Avenue.

8 MR. HOFFMANN: I'm sorry?

9 THE INTERPRETER: 1370 Sixth Avenue.

10 Q. That's one could be; you're not sure, right?

11 A. No, I don't remember much of the addresses where I would
12 go.

13 Q. All right. Now, during your employment at Al Horno, you
14 almost always started work at 11:00, right?

15 THE INTERPRETER: During?

16 MR. HOFFMANN: Almost always started work at 11 a.m.

17 A. Yes.

18 Q. Now, I heard your testimony about your duties and the work
19 that you did other than delivery, and I want to ask you again,
20 did you speak to the other plaintiffs about what you were going
21 to testify to on the stand today regarding that subject?

22 A. Well, I think that this shouldn't be discussed with my
23 coworkers because that is what I did daily with them.

24 Q. OK. So you didn't discuss it?

25 A. No.

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Adonias Pacheco - Cross

1 Q. Let's talk what happened on a daily basis. You'd get to
2 work at 11, right?

3 A. Yes.

4 Q. And you said like two or three days a week, you spent 40
5 minutes putting away merchandise, correct?

6 A. Or maybe more.

7 Q. Or more than 40 minutes.

8 A. No. (in English).

9 Q. Or more days per week?

10 A. More days, more days per week.

11 Q. Did you do it pretty much every day?

12 A. Almost daily.

13 Q. Good. OK.

14 So that 40 minutes, then you spent 15 to 20 minutes doing
15 garbage, right?

16 A. Yes.

17 Q. Then pretty much every day you cleaned the sidewalk, which
18 took you 20 to 30 minutes, right?

19 A. Yes.

20 Q. Then you had to do, clean up the basement, right?

21 A. Yes.

22 Q. How long did that take?

23 A. Around 20 minutes.

24 Q. And then you had to do the sodas, right?

25 A. Yes.

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Adonias Pacheco - Cross

1 Q. How long did the sodas take?

2 A. Around 15 to 20 minutes.

3 Q. And then you had to do windows?

4 A. Yes.

5 Q. And you had to mop?

6 A. Yes.

7 Q. And you had to change the garbage-can bags, right?

8 A. Yes.

9 Q. And you had to do this all before you started doing
10 deliveries, right?

11 A. No.

12 Q. Didn't you testify just a few minutes ago that these were
13 things you did when you first came in, before you started doing
14 deliveries?

15 A. Well, actually, when we arrived, that's what -- those were
16 the main jobs that we had to do, but if there was a delivery,
17 they would send us to the delivery, and then we would come back
18 and continue.

19 Q. All right. So the morning shift was from 11 to 3, right?

20 A. Yes.

21 Q. So if you add up all the time that you said you did these
22 nondelivery functions, what percent of the time between 11 and
23 3 did you spend actually doing deliveries?

24 A. Maybe 40 percent. Perhaps.

25 Q. Doing deliveries?

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Adonias Pacheco - Cross

1 A. No.

2 Q. What percentage of the time did you spend doing things
3 other than deliveries?

4 A. Around 40 percent, more or less.

5 Q. So 40 percent of four hours, you were able --

6 MR. HOFFMANN: That's -- what's the math?

7 Q. So you were able to do all these things in an hour and 45
8 minutes, to put away the merchandise, the garbage, the
9 sidewalk, clean the basement, put the sodas away, do the
10 windows, mopping, change -- you were able to do that in that
11 time? You're sure?

12 A. You're asking me for an estimate. You're not asking me for
13 the exact time that I would do all that.

14 Q. What I'm trying to understand is, you told us all these
15 things that you did and how much time it took, and I'm
16 wondering how it didn't take at least half of your shift to do
17 all these things if you're, in fact, telling us the truth.

18 A. I didn't understand what this is.

19 Q. Let me ask you. You said you spent about 40 percent of the
20 time doing nondelivery work. Was that the same when you came
21 back to work from 5 to 11?

22 A. I think it was.

23 Q. Now, sir, I want you to think back. Do you remember coming
24 to my office to be deposed, where you gave testimony under
25 oath?

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Adonias Pacheco - Cross

1 A. Yes.

2 Q. Do you realize that you gave a completely different story
3 when you gave your testimony in my office under oath about what
4 your duties were when you worked at Al Horno?

5 A. Well, I remember some of what I said, but I don't remember
6 everything I said.

7 Q. Did you understand that you were under oath when you
8 testified at my office?

9 A. Yes.

10 Q. Did you take that oath seriously?

11 A. Yes.

12 Q. And did you tell the truth when you testified in my office
13 at your deposition?

14 A. As far as I remember, I did.

15 Q. Was your recollection of what your job duties were when you
16 worked at Al Horno better back at the time, the summer when you
17 were deposed at my office, or is it better today?

18 A. I don't understand exactly.

19 Q. I'll withdraw it.

20 Let's refresh your recollection. Let's go through some of
21 your testimony at your deposition. OK, sir?

22 A. Yes.

23 Q. I'm on page 56, line 12:

24 "Q. Now, when you started work, when did you start making your
25 first deliveries?

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Adonias Pacheco - Cross

1 "A. Around 11:00.

2 "Q. So you would show up for work, and when the first order
3 came out, you would make the delivery?

4 "A. Yes.

5 "Q. Did you keep making deliveries until the end of your
6 shift?

7 "A. Yes."

8 MR. HOFFMANN: Page 56.

9 Q. Is that what you testified to in my office?

10 A. Well, when we showed up, what we had to do, the most
11 important jobs we had to do were, were to organize the
12 merchandise deliveries; to clean; to mop, unless there was an
13 order, and then we had to stop and do the delivery, and then
14 when we would come back, continue with that job.

15 Q. Sir, I asked you --

16 THE COURT: Mr. Hoffmann, do you want to give me a
17 copy of this deposition?

18 MR. HOFFMANN: Oh, I'm so sorry, your Honor.

19 THE COURT: I tried to get your attention earlier.

20 MR. HOFFMANN: I apologize.

21 THE COURT: Thank you.

22 THE INTERPRETER: Would we have an extra copy?

23 MR. HOFFMANN: Page 56.

24 THE COURT: And a copy for the interpreter too.

25 MR. HOFFMANN: Your Honor, I apologize.

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Adonias Pacheco - Cross

1 Q. Page 56, lines 12 to 25, I asked you, sir; "did you keep
2 making deliveries until the end of your shift," and you
3 answered yes, right?

4 A. Yes.

5 Q. Now, I asked you at your deposition whether you did any
6 tasks other than delivery, and you only told me about two.
7 Actually, you only told me about one. You only told me about
8 mopping.

9 Do you remember telling me that? Do you remember that,
10 sir?

11 A. But at that time, you were kind of aggressive asking me
12 questions, and you were not asking the questions the way you
13 are doing it today. And frankly, you were looking for the
14 answers you wanted but not the ones we were saying.

15 Q. I see.

16 Do you remember telling me that you only had to mop one or
17 two times during the entire time that you worked for Al Horno?
18 Do you remember saying that at your deposition?

19 A. One or twice during two years?

20 Q. Do you remember saying that?

21 A. No, I don't remember.

22 Q. All right. Let's go to your testimony, sir. I'm at the
23 bottom of page 57:

24 "Q. Other than making deliveries, did you have any other
25 duties?"

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Adonias Pacheco - Cross

1 A. Yes.

2 THE COURT: Are you going to read the questions and
3 answers?

4 MR. HOFFMANN: I am.

5 THE COURT: And ask if he recognizes --

6 MR. HOFFMANN: Yes. Let me move to question -- I'm at
7 now page 58, line 15:

8 "Q. My question is how long when you worked at the restaurant
9 at the beginning of your shift were you asked to mop the
10 basement?

11 "A. One or two times.

12 "Q. During the entire time that you worked?

13 "A. Yes.

14 "Q. That was the only time you did it, right?

15 "A. Yes."

16 THE COURT: And would the interpreter read from --

17 THE INTERPRETER: Yes.

18 MR. HOFFMANN: Lines 9 through 24.

19 THE COURT: That's not what you just read.

20 THE INTERPRETER: No, he didn't.

21 MR. HOFFMANN: I'm sorry.

22 THE INTERPRETER: I think it was line 15.

23 MR. HOFFMANN: Page 58.

24 THE COURT: You started reading at line 15 just now.

25 MR. HOFFMANN: Right, I did.

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Adonias Pacheco - Cross

1 THE INTERPRETER: Yes.

2 THE COURT: Then you just asked her to read -- are you
3 going to start again on line 9?

4 MR. HOFFMANN: No. Line 15. I had the wrong line.
5 Line 15. Lines 15 to 24.

6 THE COURT: Would the interpreter please read -- let
7 me explain.

8 The interpreter will now read lines 15 to 24, and
9 Mr. Hoffmann is asking whether you gave that testimony.

10 First the interpreter will read it, and so you'll
11 explain that to him?

12 THE INTERPRETER: Yes.

13 THE COURT: OK.

14 MR. HOFFMANN: Thank you.

15 THE INTERPRETER: OK.

16 BY MR. HOFFMANN:

17 Q. Did you testify to that during your deposition?

18 A. I maybe did it but didn't specify how many times a day or
19 how many times a year.

20 Q. Well, you said you did it one or two times during the
21 entire time that you worked for Al Horno. Isn't that what you
22 said?

23 MR. MULHOLLAND: Objection.

24 BY MR. HOFFMANN:

25 Q. During the entire time that you worked? And that's the

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Adonias Pacheco - Cross

1 question that you answered, correct?

2 A. Yeah, I said that but didn't specify if it was in a week,
3 in a day, all the time I was working there.

4 Q. All right. Now, do you remember this question and answer,
5 page 63: Question, this is at line 21:

6 "Q. So is it true that other than what you told us about
7 mopping, the rest of the time that you were at work, your job
8 was to take out deliveries to customers? Correct?" And your
9 answer was yes.

10 THE COURT: Then you have to ask whether he --

11 BY MR. HOFFMANN:

12 Q. Is that what you testified to during your deposition, sir?

13 A. Well, yes. I -- I said what I felt at the deposition, but
14 as I was telling you, you were intimidating, and you didn't let
15 us answer what we were ready to answer. You made us answer
16 what you wanted to hear.

17 Q. I see. Can you show me -- withdrawn.

18 So you felt that you didn't have a chance to give full
19 answers at your deposition?

20 A. All the time that you were asking, you were in a real
21 hurry, so my mind -- in my mind, I didn't have time to really
22 think about what you were asking me, and I couldn't -- I didn't
23 have a chance to, for, to give you a full answer.

24 Q. Were you taking any kind of medication at your deposition?

25 A. Are you talking about this one or the other one?

IlnWadol

Adonias Pacheco - Cross

1 Q. During your deposition at my office, had you taken any
2 medication that may have affected the way that you answered the
3 questions?

4 A. No. The problem was because you were pressuring us to
5 answer.

6 Q. So you felt that I was too impatient, and that's why you
7 gave these false answers to my questions? That's your
8 testimony?

9 MR. MULHOLLAND: Objection to form.

10 THE COURT: You're objecting to the characterization
11 of the testimony?

12 MR. MULHOLLAND: Yes.

13 THE COURT: Overruled. You may answer.

14 A. Could you please repeat the question?

15 Q. Sure. I'll repeat it.

16 You felt that because I was too impatient, you gave false
17 testimony during your deposition?

18 A. No, it was not -- I didn't give you false answers. It
19 wasn't false. The thing is that what you wanted to do is, at
20 your deposition, ask us the questions, and then when we would
21 be in front of the jury, we would contradict ourselves.

22 Q. I see. So I wanted to get you to say things that weren't
23 true so that we could make a case in front of a jury; that's
24 what you believe? That somehow my questions were designed to
25 get you to give false testimony?

IlnWadol

Adonias Pacheco - Cross

1 A. Well, perhaps it wasn't false testimony that I said things
2 at the deposition, and now that I'm here, I'm making -- I'm
3 making an input of other things that I did also.

4 Q. I see. So when I asked you at your deposition, "Isn't it
5 true that other than what you told us about mopping, the rest
6 of the time you were at work, your job was to take out
7 deliveries to customers, correct"; when I asked you that
8 question, you just didn't remember about all these other duties
9 you told us about this morning?

10 A. Yes. On occasion, as I said before, I would arrive and
11 mainly clean everything.

12 Q. But sir, I was asking you, in sum, the only job that you
13 did other than deliveries was mopping, and you agreed with
14 that, right?

15 A. Yes.

16 Q. Was that honest when you said it in my office, under oath?

17 A. Yes.

18 Q. Thank you.

19 Now, let's go back to the percentages. Do you remember
20 being asked at your deposition what percentage of your time you
21 spent doing deliveries and what percentage of your time you
22 spent doing other things?

23 A. I don't remember.

24 Q. You don't remember one way or the other?

25 A. I don't recall. I don't remember.

IlnWadol

Adonias Pacheco - Redirect

1 Q. Let me refresh your recollection. Page 66, line 2:

2 "Q. Would you say that of the times that you were on the clock
3 at Al Horno, you spent about 99 percent of your time doing
4 deliveries?

5 "A. Almost."

6 And then I asked: "98 percent, would that be more
7 accurate?" And your answer was, "80, 85 percent."

8 Do you remember giving that testimony at your deposition?

9 A. I don't remember.

10 Q. Is that true, that you spent 80 to 85 percent of your time
11 making deliveries when you worked at Al Horno?

12 A. The percentage was less.

13 MR. HOFFMANN: Thank you.

14 REDIRECT EXAMINATION

15 BY MR. MULHOLLAND:

16 Q. Mr. Pacheco, what's your highest level of education?

17 A. I started high school, but I didn't finish.

18 Q. So how many years did you spend in school?

19 A. Like eight, I believe.

20 Q. I want to read to you a portion of your deposition.

21 Mr. Hoffmann stated that the only task apart from deliveries
22 that you told him about was mopping. But that's not true; you,
23 in fact, told him about more, isn't that correct?

24 A. Yes.

25 MR. MULHOLLAND: I'd like to read a portion of his

IlnWadol

Adonias Pacheco - Redirect

1 deposition, starting on page 57 and carrying over to 58, line
2 25, at the bottom of 57, and I'll read continuing over to 58
3 down to line 8:

4 "Q. Other than making deliveries, did you have any other
5 duties?

6 "A. At the beginning, they told us to go and do some mopping
7 and to go down to the basement, fix the deliveries and to wash
8 the street outside. And when we closed the place, they told us
9 to mop the whole restaurant where the clients were."

10 Q. Do you remember saying that?

11 A. Yes, I think I do remember.

12 Q. And do you remember telling Mr. Hoffmann at your deposition
13 about an address where you recall making a large delivery?

14 A. I don't remember.

15 Q. Let me refresh your memory. On page 74, lines 9 through
16 11:

17 "Q. What was the address that you took the order to?

18 "A. 1345 and Sixth Avenue."

19 Do you remember sharing that address with Mr. Hoffmann?

20 A. Yes.

21 MR. MULHOLLAND: No further questions. Thanks.

22 MR. HOFFMANN: No redirect.

23 THE COURT: Thank you, Mr. Pacheco. Your testimony is
24 concluded. You may go back to your seat.

25 THE WITNESS: Thank you, your Honor.

IlnWadol

Aranda - Direct

1 (Witness excused)

2 THE COURT: We have about 15 minutes. You can call
3 your next witness, Mr. Mulholland.

4 MR. MULHOLLAND: Plaintiffs would like to call
5 Mr. Antonio Aranda to the stand.

6 ANTONIO ARANDA,

7 Plaintiff, called as a witness on his own behalf,
8 having been duly sworn, testified as follows:

9 THE COURT: You may proceed.

10 MR. MULHOLLAND: Thank you.

11 DIRECT EXAMINATION

12 BY MR. MULHOLLAND:

13 Q. Mr. Aranda, could you tell the Court if you ever worked at
14 a restaurant called Al Horno?

15 A. Yes.

16 Q. When did you first start working at Al Horno?

17 A. June 2014.

18 Q. Who hired you?

19 A. Jimmy.

20 Q. Do you know his last name?

21 A. No. No.

22 Q. How long did you work with Jimmy?

23 A. I don't recall exactly.

24 Q. Was it weeks, months, years, something else?

25 A. That I recall, a month, maybe.

IlnWadol

Aranda - Direct

1 Q. OK. Did there come a time when you left Al Horno?

2 A. Yes.

3 Q. When was that?

4 A. September 2016.

5 Q. Between June of 2014 and September of 2016, did you work at
6 Al Horno continuously?

7 A. Yes. Correct.

8 Q. When you were first hired at Al Horno, what was your rate
9 of pay?

10 A. \$5.

11 Q. How was that paid?

12 A. They paid me in cash.

13 Q. Did there come a time when your pay rate changed?

14 A. Yes.

15 Q. When and how?

16 A. Then later on they paid us with personal checks.

17 Q. OK. When was that?

18 A. Like July, July 2014.

19 Q. OK. So like one month after you were working, they started
20 paying you in personal check?

21 A. No. When I started, it was cash.

22 Q. Yeah. For how long did they pay you in cash?

23 A. Like a month.

24 Q. OK. When they started paying you in personal check, did it
25 change -- when they started paying you in personal check, did

IlnWadol

Aranda - Direct

1 they change your rate of pay?

2 A. No.

3 Q. All right. Did there come a time when they did change your
4 rate of pay?

5 A. That I know of, no.

6 Q. OK. So how much did you make per hour in 2015?

7 A. They told us that 7.75, but they would deduct \$2.

8 Q. Was that in 2015, 2016, or something else?

9 A. 2015 to 2016.

10 Q. I'm sorry. What did you say your hourly rate was during
11 that time?

12 A. 7.75. 7.75.

13 Q. OK. If you worked more than 40 hours in a week, did they
14 pay you at a different rate?

15 A. No.

16 Q. OK. When you first started working at Al Horno, what was
17 your schedule?

18 A. When I started out, I went in at eight and left at three,
19 and then I would come back at six and would go out at ten.

20 Q. Is that a schedule you had when you first started working
21 back in June of 2014?

22 A. Yes.

23 Q. OK. How long did you have that schedule for?

24 MR. MULHOLLAND: Actually, withdrawn, withdrawn.

25 Q. When you had that schedule, how many days a week did you

IlnWadol

Aranda - Direct

1 work?

2 A. Six days.

3 Q. OK. And how long did you have that schedule for?

4 A. 2014 to 2015.

5 Q. OK. Did you have a different schedule if you worked on
6 Sundays?

7 MR. HOFFMANN: I'm sorry. I didn't hear the last
8 question. Could you read it back, please.

9 THE COURT: I will ask the reporter to read it back.

10 (Record read)

11 A. No.

12 Q. So you always worked two shifts?

13 A. Yes.

14 Q. And then what was your schedule in 2016?

15 A. 12 to 9.

16 Q. How many days a week?

17 A. Four and a half.

18 Q. Four and a half days a week?

19 A. Yes.

20 Q. What do you mean?

21 A. From Monday to Friday noon.

22 Q. You worked starting at 12 noon to 9:00 p.m., or you worked
23 from 9 a.m. to 12?

24 A. No. I worked from noon until 9 p.m.

25 Q. OK. 4.5, four and a half days a week?

IlnWadol

Aranda - Direct

1 A. Yes.

2 Q. What were the days? Sorry. Withdrawn.

3 What was the half day?

4 A. Fridays.

5 Q. In what sense was it a half day?

6 A. 12 to 3.

7 Q. OK. All right. When you were hired in June of 2014, what
8 was your position?

9 A. Well, we would put away the merchandise that arrived.

10 Q. No. When you were first hired, what was the title, type of
11 job?

12 A. Oh. To make deliveries.

13 THE COURT: We have five minutes until the break.

14 MR. MULHOLLAND: OK.

15 Q. After Jimmy Sanchez hired you -- withdrawn.

16 How many managers did you work under while you worked at Al
17 Horno?

18 A. Three.

19 Q. Could you name them?

20 A. Jimmy, Ricardo and Samuel.

21 Q. Did you ever work for a manager called Mr. Djibril Zakari,
22 otherwise known as Gabriel?

23 A. No.

24 Q. Did you recognize him in court earlier today and yesterday?

25 A. Yes.

IlnWado2

Aranda - Direct

1 Q. Had you ever seen him at Al Horno before?

2 A. Yes.

3 Q. Do you remember when the first time you saw him was at Al
4 Horno?

5 A. 2015.

6 Q. Do you remember when in 2015?

7 A. Not correct -- not exactly.

8 Q. Well, approximately, if you could give me a season.

9 A. January 2015.

10 Q. OK. Did you ever have any discussions with him?

11 A. No.

12 Q. Did he ever give you documents to sign?

13 A. That he gave me?

14 Q. Yeah.

15 A. No.

16 Q. OK.

17 MR. MULHOLLAND: Might it be logical to take a break
18 now before I go into other areas?

19 THE COURT: Yes. We will take our lunch break now and
20 resume at 1:45; that is, quarter to two.

21 (Luncheon recess)

22

23

24

25

IlnWado2

Aranda - Direct

AFTERNOON SESSION

1:45 p.m.

THE COURT: Good afternoon.

Mr. Aranda, would you come back to the witness stand, please.

You may continue.

MR. MULHOLLAND: Thank you, your Honor.

Q. Mr. Aranda, during your time at Al Horno, did you ever work more than 40 hours in a week?

A. Yes.

Q. Did you ever get paid at a different rate when you worked over 40 hours in a week?

A. No.

Q. Did you ever work over ten hours in a single day?

A. Yes, on Sundays.

Q. OK. What about the days you worked two shifts?

A. First I went in at eight to three, then from six to ten.

Q. Did you ever get an extra hour pay when you worked those split shifts?

A. No.

Q. When you said Sundays you worked over ten hours in a day, how were Sundays different from the other days when you worked a split shift?

A. Excuse me?

Q. How were Sundays different from the other days when you

IlnWado2

Aranda - Direct

1 worked a split shift?

2 A. I worked ten to ten.

3 Q. Was that a split shift or something else?

4 A. No. It was just one complete shift.

5 Q. The other days during the week, did you work split shifts?

6 The other days during the week, did you work split shifts?

7 A. Yes.

8 Q. OK. Is it fair to say only Sundays is the day you would
9 work from ten to ten without taking a break?

10 A. Correct.

11 Q. During your time at Al Horno, did you earn tips?

12 A. Yes.

13 Q. OK. How did you -- how were you paid your tips?

14 A. At the end of the week, they would pay us.

15 Q. How would you keep track of your tips on a daily basis?

16 A. First, I would do my accounting, then the manager would do
17 his.

18 Q. How would you do your accounting?

19 A. With a calculator.

20 Q. All right. Where would you get the numbers to put in the
21 calculator?

22 A. In Seamless it comes where you -- where they give you your
23 tips.

24 Q. What are you referring to?

25 A. The paper.

IlnWado2

Aranda - Direct

1 Q. Where would you get these papers?

2 A. From Seamless, what they send.

3 Q. Would you pick it up from the printer?

4 A. No. The one who packed it would put it in, on the bag.

5 Q. With a staple on the bag?

6 A. Yes.

7 Q. Would you collect them as the day went on?

8 A. Yes.

9 Q. Was there any circumstance where the managers at Al Horno
10 would withhold some of your tips?

11 A. Yes.

12 Q. Could you tell the Court what those circumstances were?

13 A. When we do large orders.

14 Q. What's a large order?

15 A. 600-, \$700.

16 MR. HOFFMANN: I'm sorry?

17 THE INTERPRETER: 600-, \$700.

18 THE COURT: If you're going to ask something or
19 interrupt, stand up and speak out. We don't want to have to
20 guess what you're doing. Thank you.

21 You may go on.

22 BY MR. MULHOLLAND:

23 Q. What would happen with these tips for these large orders?

24 A. Two times it happened with Jimmy, and the other time when
25 Samuel was there.

IlnWado2

Aranda - Direct

1 Q. What happened, though?

2 A. The other time they didn't give me the complete, all the
3 tip. They told him to give me only 30, the owners.

4 Q. OK. Who told you?

5 A. The owner.

6 Q. Is the owner sitting in this courtroom today?

7 A. Yes.

8 Q. Is it Mr. Pizzimenti?

9 A. I don't know his last name, but I know his name is Chris.

10 Q. Is it the younger gentleman in the suit at the back table?

11 A. Yes.

12 Q. OK. And what did he tell you?

13 A. They gave me a tip for 110, and the manager at that time,
14 who was Samuel, told me they couldn't give me that amount.

15 Q. But what did Mr. Pizzimenti tell you, if anything?

16 A. That they should give me only \$30 out of that money.

17 Q. Did this happen -- how do you know that the tip was over
18 \$100?

19 A. It was a credit card.

20 Q. So how did you know?

21 A. They signed it.

22 Q. Who is they?

23 A. The customer.

24 Q. What did they sign?

25 A. The amount, and they signed their signature.

IlnWado2

Aranda - Direct

1 Q. Onto what?

2 A. There's two receipts, one that says tips, and the customer
3 signs underneath.

4 Q. OK. How many times were your tips withheld for catering
5 orders?

6 A. How many times?

7 Q. Yes.

8 A. Well, it would be two, twice a week.

9 Q. OK. How many catering orders did you do in a week?

10 A. Catering? Like one a week.

11 Q. So how did they withhold catering tips from you twice a
12 week if you only did one a week?

13 A. OK. It was when we took other, larger orders, but in bags.

14 Q. OK. So how many times did you do that in a week?

15 A. Two, three times.

16 Q. And how would you -- how big were these orders?

17 A. Like \$300? The amount?

18 Q. How big were they physically; how many bags, how many
19 boxes?

20 A. Perhaps you took three or two.

21 Q. OK. Would you ever have to use a cart to convey these
22 orders?

23 A. No. Not in the bags, no, but when we had plates full, yes.

24 Q. Could you give the Court a range of the amount of tips that
25 were withheld on a weekly basis? Just for you.

IlnWado2

Aranda - Direct

1 A. Once I had a tip for 80 and they only gave me 20.

2 Q. OK. But what is a typical amount of money that they
3 withheld from you, from these large orders?

4 A. Well, they would give me 20 and they kept the rest.

5 Q. Yes, how much was the rest, typically? Was the rest \$60?
6 Was the rest \$100? Was the rest \$10? An average.

7 A. Maybe 80.

8 Q. You're saying 80 is the amount they withheld or 80 is the
9 amount of the full value of the tip?

10 A. Yes.

11 Q. OK.

12 A. 80 is what they kept.

13 Q. How did you know that tips were being withheld?

14 A. Because they would tell us.

15 Q. Did you ever notice a discrepancy between your count and
16 the manager's count?

17 A. Yes.

18 Q. Did you ever make a complaint to any of the managers about
19 this?

20 A. No.

21 Q. Did you ever, apart from the -- aside from the discussion
22 you told us that you had with the owner, were there any other
23 discussions with Al Horno management about withholding tips?

24 A. No.

25 Q. What were your duties at Al Horno apart from deliveries?

IlnWado2

Aranda - Direct

1 A. We had to put the merchandise away.

2 Q. When would you do that -- during a typical day, when would
3 you do that?

4 A. From eight to ten.

5 Q. OK. How long did it take?

6 A. It would take us like, take 20 minutes.

7 Q. What kind of tasks did it entail?

8 A. To put away the merchandise, the delivery, and the sodas.

9 Q. How big was the delivery? Merchandise.

10 A. Well, when two companies would arrive with stuff, it would
11 be, like, 50 boxes.

12 Q. How often would merchandise arrive at Al Horno?

13 A. Three times a week.

14 Q. OK. How many times would two trucks arrive?

15 A. Mondays and Fridays.

16 Q. Did you have any other tasks besides deliveries that you
17 did during the morning shift?

18 A. Yes.

19 Q. Like what?

20 A. We made boxes for the quesadillas. We had to break down
21 the boxes for the merchandise that we put away came in.

22 Q. Anything else?

23 A. We had to clean the windows. And wash the courtyard.

24 Q. What do you mean, courtyard?

25 A. The front of the restaurant.

IlnWado2

Aranda - Direct

1 Q. During the winter, did you have to shovel?

2 A. Sometimes.

3 Q. Anything else?

4 A. And at night we had to clean.

5 Q. What kind of cleaning tasks did you guys do at night?

6 A. We had to sweep, mop. We have to take out the garbage.

7 Q. Anything else?

8 A. You have to bring the things up for the prep workers.

9 Q. Would you do that in the morning, at night, or some other
10 time?

11 A. In the morning you have to bring the things up.

12 Q. So in the morning, how long would it take you to refill the
13 sodas?

14 A. 20 minutes.

15 Q. What about breaking down the boxes?

16 A. 15, about.

17 Q. What about assembling the boxes for the quesadillas?

18 A. Ten minutes.

19 Q. How often would you have to assemble the quesadilla boxes?

20 A. Every day.

21 Q. Did anyone other than delivery workers do that job?

22 A. Yes, we all had to do that, because there were a lot of
23 deliveries going out.

24 Q. OK. How long did it take you to clean the windows?

25 A. Another 20 minutes.

IlnWado2

Aranda - Direct

1 Q. All right. How long did it take you to wash the sidewalk?

2 A. The same, 20.

3 Q. When you say 20 minutes, did that include both the window
4 and the sidewalk, or is it 20 minutes per each?

5 A. 20 each, the windows and 20 the --

6 Q. Sidewalk? OK.

7 How much time would you spend bringing things up and down
8 the stairs?

9 A. 25.

10 Q. Was it all at one time or spread throughout the day?

11 A. Every morning.

12 Q. Yeah. But when you say you were bringing things up and
13 down the stairs, was there one time where all you did was bring
14 things up and down the stairs, or was it a task you repeated
15 throughout your shift?

16 A. Well, we had to do other things.

17 Q. OK. Who asked you to bring those up and down the stairs?

18 A. First the owner would let us know that we had to help the
19 prep workers, because they were women, that we had to help them
20 take the stuff upstairs, carry the stuff.

21 Q. Who was the owner that you were referring to?

22 A. Chris.

23 Q. When did he tell you that?

24 A. No. The manager told us.

25 Q. All right. Did the owner tell you to do that?

IlnWado2

Aranda - Direct

1 A. No.

2 Q. All right. What kind of things were you bringing up and
3 down the stairs?

4 A. Two boxes of tomatoes, three boxes of avocados, two bags,
5 about, of onions.

6 Q. OK. How many stairs were there?

7 A. Like eight or seven.

8 Q. Was there a basement to Al Horno?

9 A. Yes.

10 Q. All right. What was down in the basement?

11 A. A refrigerator and the owner's office.

12 Q. OK. I want to direct your attention to the activities you
13 did at night, during your night shift. How much time did you
14 spend sweeping at night?

15 A. I had to do that about twice a week.

16 Q. Yeah. How much time did it take you to do the sweeping --
17 when you did do -- withdrawn.

18 When you did sweep, how long did it take you?

19 A. Ten minutes.

20 Q. And how many times would you have to do that within a
21 shift?

22 A. Excuse me?

23 Q. When you did perform sweeping, when you did sweep at the
24 restaurant, did you do it just one time during your shift or
25 multiple times in your shift?

IlnWado2

Aranda - Direct

1 A. Once.

2 Q. Then how much time did you spend mopping?

3 MR. MULHOLLAND: Mopping.

4 THE INTERPRETER: Oh, mopping.

5 A. Around 20 minutes.

6 Q. How much time would you spend dealing with the garbage?

7 A. Around 15 minutes.

8 Q. Is that something you would do -- withdrawn.

9 Did you deal with the garbage every, every night shift that
10 you had?

11 A. Yes, we would take the garbage out.

12 Q. All right. Did you mop every night shift that you had?

13 A. We'd take turns sometimes.

14 Q. OK. So how many times during a week would you mop?

15 A. Around two times a week.

16 Q. Besides sweeping, besides mopping, besides dealing with the
17 trash, are there any other tasks that you had to do during your
18 night shift?

19 A. We would place the sodas in the refrigerator, we would fill
20 it with sodas.

21 Q. How many times would you do that during your night shift?

22 A. Also around two times a week.

23 Q. OK. How long would it take you?

24 A. Around 20 minutes.

25 Q. Any other tasks you would do during the night shift?

IlnWado2

Aranda - Direct

1 A. No. No. Those only.

2 Q. During your morning shift, can you tell the Court a range
3 for the amount of deliveries that you would perform, just
4 during your morning shift?

5 A. When I started, it wasn't very busy, so I would do half a
6 shift with delivery -- with a deliverer.

7 THE INTERPRETER: Sorry.

8 Q. How many deliveries, could you give the Court a range, high
9 and a low, how many deliveries you would do during a night
10 shift?

11 A. At night, when it's busy, around 15.

12 THE COURT: Now, as to the question of the number of
13 deliveries in the morning shift, would you ask that question
14 again, because I think he may have said a number, and I don't
15 know that it was interpreted that way.

16 Would you ask the question again as to morning
17 deliveries.

18 MR. MULHOLLAND: Sure.

19 THE COURT: So that we'll have it clear.

20 MR. MULHOLLAND: Sure.

21 Q. Mr. Aranda, could you tell me again, could you give me a
22 range, high and low, of the amount of deliveries you would do
23 during your morning shifts?

24 A. Minimum five, ten maximum.

25 Q. Why did you do so few in the morning compared to the night?

IlnWado2

Aranda - Direct

1 A. Because before it wasn't busy.

2 Q. At what time during the day did most of the deliveries --
3 withdrawn.

4 At what time during the day did the delivery orders start
5 to come in for Al Horno?

6 A. We started at eight, but maybe we would have one, two,
7 three deliveries.

8 Q. OK. What was the busy time for Al Horno?

9 A. From 11 to 2 p.m.

10 Q. OK. How many deliveries would you carry with you on a trip
11 out of the restaurant?

12 A. When it is busy, like four of them.

13 Q. And when it's not busy?

14 A. One, two.

15 Q. Could you give the Court a range, a high and a low, of how
16 much time it took you to do a trip for your deliveries?

17 A. If the trip is long, it was about 45 minutes. If it is
18 short, about 25.

19 Q. Did you ever do delivery -- ever have trips that lasted
20 less than 25 minutes?

21 A. Yes.

22 Q. So how often did you have trips that were less than 25
23 minutes?

24 A. Could you repeat the question, please?

25 Q. Yeah. How often would your trips for deliveries be less

IlnWado2

Aranda - Direct

1 than 45 minutes?

2 A. You know, when the deliveries were together to the same
3 address, it would take me less time.

4 Q. Yeah. So what's the least amount of time that a trip would
5 take?

6 A. Ten minutes.

7 Q. Did you ever buy any equipment to do your job at Al Horno?

8 A. Yes.

9 Q. What did you buy and how much did you pay.

10 A. I bought one bike. Actually, I bought two, because one of
11 them was stolen from me.

12 Q. How much did you pay for each bike?

13 A. The first one I paid \$700, and the second one I paid \$800.

14 Q. OK. Did you buy anything else in order to do your job at
15 Al Horno?

16 A. Yes.

17 Q. Yeah. What did you buy and how much?

18 A. I bought two helmets and the lock and the vest.

19 Q. OK. So how much was the vest?

20 A. Around \$20 I paid.

21 Q. How much did you pay for the helmets?

22 A. One was \$50 and the other one was \$80.

23 Q. And what about for the lock; how much did that cost?

24 A. 70.

25 Q. Who told you to buy these things?

IlnWado2

Aranda - Direct

1 A. No one, because I needed them.

2 Q. All right. Did anybody offer to reimburse you from --
3 withdrawn.

4 Did any of the management at Al Horno offer to reimburse
5 you for these purchases?

6 A. No.

7 Q. I'm going to ask you to turn to Exhibit C, Defendants'
8 Exhibit C in the book in front of you. Could you take a moment
9 to take a look at the pages there?

10 MR. MULHOLLAND: Actually, withdrawn.

11 Q. Just take a look at the first page. Do you recognize that
12 document?

13 A. Yes.

14 Q. What is it?

15 A. They made me sign it, but I have no idea what it is.

16 Q. Is there a signature there?

17 A. Yes.

18 Q. Do you remember when you signed this?

19 A. Not exactly.

20 Q. What do you remember about the timing of when you signed
21 this?

22 A. When I -- they made me sign, all this was not filled out.

23 Q. OK. We'll get to that in a second, but can you give an
24 estimate of when you remember signing this?

25 A. Around end of 2014.

IlnWado2

Aranda - Direct

1 Q. Did they give you to sign -- did somebody ask you to sign
2 this in July of 2014?

3 A. No.

4 Q. Did Ricardo give you this to sign in July 2014?

5 A. The month, no.

6 Q. OK. Who gave you this to sign?

7 A. Ricardo.

8 Q. Is that Ricardo's handwriting? Is that Ricardo's
9 handwriting at the bottom on the right?

10 A. No.

11 Q. Take a look at page 2.

12 MR. MULHOLLAND: Actually, withdrawn.

13 Q. Go back to page 1, please. I apologize.

14 What, what -- see how there's three columns on the page?

15 A. Yes.

16 Q. And which column do you recall seeing, do you recall being
17 blank when you signed it?

18 A. His name and this.

19 THE COURT: What is he pointing to?

20 He's pointing at the first column.

21 MR. MULHOLLAND: OK.

22 A. And the date.

23 Q. And the date? OK.

24 If you could take a look at the second page, do you
25 recognize your signature on this page?

IlnWado2

Aranda - Direct

1 A. Yes.

2 Q. Do you know who gave you this to sign?

3 A. Ricardo.

4 Q. Do you recall when?

5 A. No, not exactly.

6 Q. OK. Do you remember if any part was filled out or blank,
7 or something else, when you signed it?

8 A. It was blank. There was no date or name.

9 Q. Was the rest of it filled out, then?

10 A. No, either. It wasn't.

11 Q. Was it filled out or it wasn't filled out?

12 A. No, it wasn't filled out.

13 Q. Take a look at the page after that, page 3. Do you recall
14 when you were given this document to sign?

15 A. Yes.

16 Q. When?

17 A. The exact day I do not remember.

18 Q. Do you remember an approximate time?

19 A. Well, yes. Like in 2015.

20 Q. Could you take a look at the last page of this exhibit,
21 page 4? Do you recall --

22 THE INTERPRETER: Hang on a second.

23 MR. MULHOLLAND: Oh, sorry.

24 THE COURT: The last page is 08.

25 MR. MULHOLLAND: 04 of Defendants' Exhibit C.

IlnWado2

Aranda - Direct

1 Q. Is that your signature there?

2 A. Yes.

3 Q. Do you recall who gave you this document to sign?

4 A. Ricardo.

5 Q. Did Mr. Zakari ever give you this document to sign?

6 A. No. No.

7 Q. Was it filled out when you signed it, or were parts blank?

8 A. It was -- they were blank.

9 Q. All of it?

10 A. Yes.

11 Q. Did Ricardo ever explain to you that your tips were being
12 used to compensate you for your minimum wage?

13 A. I'm sorry?

14 Q. Did anyone ever tell you -- did any -- did the management
15 at Al Horno ever explain to you how you were being paid minimum
16 wage?

17 A. No.

18 Q. Did anyone at Al Horno, any of the management, ever explain
19 to you that if your tips were too low on a certain day, that
20 they would have to pay you the minimum wage at that time?

21 A. No.

22 Q. Did Mr. Zakari, also known as Gabriel, did he ever explain
23 to you how your tips were being used to justify paying you less
24 than the minimum wage?

25 A. No. No. He never told me anything.

IlnWado2

Aranda - Direct

1 Q. OK. Could you turn to Exhibit K, page 1 of Exhibit K?

2 A. There's no date here.

3 Q. I understand.

4 THE INTERPRETER: I'm sorry. What?

5 MR. MULHOLLAND: Exhibit K. Page 1 of Exhibit K.

6 Q. Do you recognize the document there?

7 A. Yes.

8 Q. Do you recognize your signature on the document?

9 A. Yes.

10 Q. What is this document?

11 A. This is the personal check that we were given.

12 Q. Is this a check, or is it something else?

13 A. From what I remember, I think it's the personal check or
14 something like that.

15 Q. OK. Let me ask you to turn to page K-3, third page of
16 Exhibit K. Do you recognize these documents?

17 A. Yes.

18 Q. What are they?

19 A. These are some personal checks.

20 Q. OK. In what context were you provided with these documents
21 to sign?

22 A. Because they include all tips and the hours.

23 Q. Yeah. But when would you be given this to sign?

24 A. On the weekends when we were given the check.

25 Q. OK. Who gave it to you to sign?

IlnWado2

Aranda - Direct

1 A. Ricardo.

2 Q. OK. Would you be allowed to keep a copy after you signed
3 it?

4 A. No.

5 Q. For what period of time did the management at Al Horno
6 provide you with these checks to sign?

7 A. On the weekends they would pay us.

8 Q. OK. But when you first started working at Al Horno, when
9 they paid you in cash, did they provide you with a document
10 like this to sign?

11 A. No.

12 Q. When did they start -- when did the management at Al Horno
13 start to ask -- when did they start asking you to sign these
14 receipts when you got your pay?

15 A. In 2015.

16 Q. OK. Let me ask you to turn to page -- sorry. Exhibit G,
17 do you recognize what this document is?

18 A. Yes.

19 Q. Could you tell the Court what it is?

20 A. My schedule.

21 Q. When you first started working at Al Horno, how did you
22 keep track of your time?

23 A. I didn't punch before.

24 Q. I understand. So when you first started working at Al
25 Horno, how did you keep track of your time?

IlnWado2

Aranda - Direct

1 A. The manager kept the time, the hours.

2 Q. Which manager?

3 A. Jimmy.

4 Q. Did there come a time when you started using a, some sort
5 of a time, time clock to keep track of your time?

6 A. Yes.

7 Q. When was that?

8 A. In December 2014.

9 Q. Do you know why you started punching in in December of
10 2014?

11 A. In order to keep the schedule in order.

12 Q. Which locations, which Al Horno locations did you work at?

13 A. In 47 and 57.

14 Q. Was there a punch-card machine at the 57th Street location?

15 A. Yes, but I didn't punch there.

16 Q. How come?

17 A. Because the same manager who was in 47 would send us to 57.

18 Q. OK. So where would you punch in?

19 A. In 47.

20 Q. Every day that you worked?

21 A. Yes.

22 Q. Would you punch in at eight when you came in?

23 A. When I worked at eight, no.

24 Q. How come?

25 A. I wasn't given the thing to punch.

IlnWado2

Aranda - Direct

1 Q. Did there come a time when you were given the thing to
2 punch?

3 A. Yes.

4 Q. When was that?

5 A. In December 2014 -- yes, 2014.

6 Q. Did your schedule change in December 2014?

7 A. Yes.

8 Q. What did it change to?

9 A. Some hours were taken away from me.

10 Q. So what hours did you work after December 2014?

11 A. I had nine or ten.

12 Q. And would you still work those two shifts?

13 A. Yes.

14 Q. And would you still work a longer shift, one long shift on
15 Sundays?

16 A. Yes.

17 Q. Did you ever get paid an extra hour when you worked more
18 than ten hours in a single day?

19 A. No.

20 Q. Did any of the management ever tell you that they were
21 taking a fee for credit card, 3 percent fee from your tips
22 because they were being paid by credit card?

23 A. No.

24 Q. Did there ever come a time that you learned that they were?

25 A. Yes, towards the end Ricardo told me.

IlnWado2

Aranda - Cross

1 Q. OK. Did you complain to anybody?

2 A. No.

3 Q. When you say the end, what time period did you view to be
4 the end?

5 A. Like towards the end of 2015.

6 MR. MULHOLLAND: That's all, your Honor. Thank you.

7 THE COURT: Thank you.

8 CROSS-EXAMINATION

9 BY MR. HOFFMANN:

10 Q. Good afternoon, Mr. Aranda.

11 A. Good afternoon.

12 Q. I'd like to kind of clarify your dates of employment. You
13 testified today that you started work in June of 2014, correct?

14 A. Yes.

15 Q. And you said that you stopped working in September of 2016,
16 right?

17 A. Yes.

18 Q. But do you remember being deposed in my office, this past
19 July?

20 A. But I didn't have the evidence to remember everything.

21 Q. Sir, my only question to you was, do you remember being
22 deposed?

23 A. Oh, yes.

24 Q. OK. And when you were deposed under oath, you gave very
25 different dates of employment for when you worked at Al Horno,

IlnWado2

Aranda - Cross

1 right?

2 A. Because I didn't recall perfectly well what the --

3 Q. You gave different dates, didn't you, sir?

4 A. That I recall or not, I don't.

5 Q. You don't recall if you gave different dates?

6 A. No.

7 Q. Didn't you tell me under oath that you started in June
8 2013?

9 A. No, I don't recall.

10 Q. Didn't you say under oath that you were -- that "I remember
11 very well that it's 2013," the year you started?

12 A. That I don't recall, no.

13 Q. Can you take a look at -- there's a transcript in front of
14 you, and if you look at page 10, I'll read it to you. And the
15 question, at line 15:

16 "Q. You started in June of what year?

17 "A. 2013.

18 "Q. Do you know the store did not exist in June of 2013? So
19 tell me, sir, how did you work there?

20 "A. I remember very well that it's 2013."

21 Does that refresh your recollection about what you
22 testified to?

23 Q. Is that what you --

24 THE INTERPRETER: I'm sorry. You'll have to tell me
25 the lines again.

IlnWado2

Aranda - Cross

1 MR. HOFFMANN: The last line would be 20, and "I
2 remember very well that it's 2013."

3 MR. MULHOLLAND: 15.

4 THE INTERPRETER: The first line was? The first line
5 was?

6 MR. HOFFMANN: 15.

7 THE INTERPRETER: And the last line was 20.

8 MR. HOFFMANN: Yes.

9 Q. Do you remember saying that, sir?

10 A. No, I don't remember very well.

11 Q. OK. And do you remember telling me that you stopped
12 working in January of 2016?

13 A. No.

14 Q. OK. I want to read from page 12 of your deposition, line
15 9:

16 "Q. When did you stop working at Al Horno?

17 "A. In January 2016.

18 "Q. How is it that you remember it was January 2016?

19 "A. That's the day I stopped working there."

20 Do you remember giving that testimony, sir?

21 A. Yes, because you were yelling at me that day and I had to
22 give you an incorrect date.

23 Q. You gave the incorrect date because I was yelling at you?

24 A. Yes.

25 Q. Why would that cause you to give an incorrect date?

IlnWado2

Aranda - Cross

1 A. I got nervous.

2 Q. Now, just going back to your deposition, sir, isn't it true
3 that there was a translator there?

4 A. Yes.

5 Q. So the questions that I asked you were actually addressed
6 to you by the translator, not by me directly, right?

7 A. I don't remember.

8 Q. Were you intimidated by the translator?

9 A. No, him, because he was yelling and hitting on the table.

10 Q. Who is "he" in that sentence?

11 A. The attorney.

12 Q. The attorney. Would it be fair to say that you don't
13 really have a good recollection about the dates of your
14 employment at Al Horno?

15 A. The first -- at the beginning, no, because I didn't have
16 this document that refreshes my memory.

17 Q. OK. Isn't it true that you started work in July of 2014?

18 A. No. It was in June.

19 Q. And isn't it true that after you were on-boarded --

20 MR. HOFFMANN: Let me withdraw that term, because I'm
21 not sure how it translates.

22 Q. Isn't it true that after you started work, for the first
23 couple of months, there was very little work for you and you
24 didn't start working regularly until December of 2014?

25 A. No.

IlnWado2

Aranda - Cross

1 Q. Wasn't the store brand-new in July of 2014?

2 A. Yes, but there was already work inside.

3 Q. Was there a lot of deliveries?

4 A. No. Deliveries, no.

5 Q. So, I want to go to your testimony about these large orders
6 that -- you said you had about two of them a week. Is that
7 your testimony, sir?

8 A. Yes.

9 Q. And how big were these two orders that you described during
10 your direct examination?

11 A. I remember the amount. They were wraps and they put them
12 in large plates.

13 Q. And you were able to carry these orders by yourself?

14 A. Sometimes it would be two of us or just one person.

15 Q. Now, you say that the average tip on these two large orders
16 that you did a week was \$80?

17 A. Yes.

18 Q. Do you know how big, what the cost was for the total order?
19 For these orders?

20 A. Like 800.

21 Q. 800, OK. So did this start right away, in July of 2014
22 that you started taking out two \$800 orders a week?

23 A. No. About a month in they gave them to me.

24 Q. So by August you were taking out two \$800 orders a week?

25 A. Yeah.

IlnWado2

Aranda - Cross

1 Q. You told us during direct examination about all these
2 different duties that you had in addition to taking out
3 deliveries in the morning. Do you remember that?

4 A. Yes.

5 Q. When you started at eight, you and another worker were the
6 only two delivery people who were working in the store, right?

7 A. Yes.

8 Q. Can you tell me who, what other people were working in the
9 store during the breakfast rush from between 8 and 10:00 in the
10 morning?

11 A. Are you talking about the kitchen workers or delivery
12 people?

13 Q. You said there were two delivery people. Were there any
14 cooks that were working during that time?

15 A. Yes, two cooks and two prep people.

16 Q. Two cooks, two prep people. Was there a porter that was
17 working at that time?

18 A. When I started out, no.

19 Q. OK. Do you remember Nico?

20 A. Yes.

21 Q. Was he a porter?

22 A. Yes.

23 Q. When did he start work?

24 A. Like mid-2015.

25 Q. OK. Was there a porter before him?

IlnWado2

Aranda - Cross

1 A. No.

2 Q. Was there another porter as well, Antonio?

3 A. No. Antonio was a prep worker.

4 Q. OK. So you mentioned that there were two cooks and two
5 prep people. How about on the front end; were there people
6 working in the front of the store?

7 A. Yes, a cashier.

8 Q. How many cashiers were working between eight and ten in the
9 morning?

10 A. There was one that was named Marlene, and then at ten, two
11 more would arrive.

12 Q. So you're saying from eight to ten, there was only one
13 cashier working?

14 A. Yes.

15 Q. Was there a --

16 A. It wasn't busy.

17 Q. Was there a dishwasher working between eight and ten in the
18 morning?

19 A. No.

20 Q. There was just the two delivery people and five others,
21 right?

22 A. Yes.

23 Q. And do you recall -- how many deliveries would go out for
24 breakfast between 10 and 12 -- I'm sorry, between 8 and 10 in
25 the morning?

IlnWado2

Aranda - Cross

1 A. Like four deliveries.

2 Q. For the whole breakfast period, from eight to ten, only
3 four deliveries went out the door every day?

4 A. Yes. When we started out, it was slow.

5 Q. OK. And how about in 2015; how many breakfast orders would
6 go out between eight and ten?

7 A. Maybe ten.

8 Q. Ten? Did it ever get higher than that?

9 A. No. It would be like ten, eight.

10 Q. Eight to ten, and that was it?

11 A. Yes.

12 Q. Do you know how many items were on the menu for the Al
13 Horno store on 47th Street for breakfast?

14 A. Tell you the truth, no.

15 Q. Did you ever look at the menu?

16 A. No.

17 Q. How long have you been in the United States, sir?

18 A. Ten years.

19 Q. And what kind of jobs did you have before you were hired by
20 Al Horno?

21 A. I worked for a company called Energy Kitchen.

22 MR. MULHOLLAND: Energy.

23 INTERPRETER NEBBIA: Energy.

24 Q. Did you sue Energy Kitchen?

25 A. No.

IlnWado2

Aranda - Cross

1 Q. Did you do deliveries for Energy Kitchen?

2 A. I started out doing deliveries, and then they hired me for
3 the kitchen.

4 Q. Did you use a bicycle to do deliveries?

5 A. When I worked at Energy Kitchen?

6 Q. Yes, sir.

7 A. Yes.

8 Q. Was it the same bicycle that you used when you worked at Al
9 Horno?

10 A. No.

11 Q. What happened to the bicycle that you had when you worked
12 at Energy Kitchen?

13 A. They stole it from me.

14 Q. Who stole it from you?

15 A. I don't know. On the street.

16 Q. Now, you testified earlier that you bought two bicycles to
17 use to work at Al Horno. Where did you buy these bicycles?

18 A. One I bought in upper Manhattan, around there, in a bike
19 store.

20 Q. Did you buy it new or used?

21 A. Used.

22 Q. It cost \$700 for a used bicycle?

23 A. Yes.

24 Q. Was it a racing bicycle, or was it just kind of a three
25 seat -- three-speed bicycle that you see delivery people riding

IlnWado2

Aranda - Cross

1 around in the city?

2 A. No, it's not a speed bicycle. It's a mountain bike, but
3 it's a brand name.

4 Q. Do you still have the bicycle?

5 A. No.

6 Q. What happened to it?

7 A. I sold it.

8 Q. Do you do delivery now for your profession?

9 A. Yes.

10 Q. Do you use a bicycle?

11 A. Yes.

12 Q. Where did you get the bicycle?

13 A. I bought it.

14 Q. So you sold the bicycle that you bought for Al Horno and
15 bought a new bicycle?

16 A. Yes.

17 Q. Can you explain why you did that?

18 A. Because I changed jobs.

19 Q. The bicycle that you bought at Al Horno, did you also use
20 that to get around town yourself in your personal life?

21 A. No.

22 Q. Did you use any kind of bicycle to get around, if you
23 wanted to visit a friend or go to the store, or maybe for a
24 second job?

25 A. No.

IlnWado2

Aranda - Cross

1 Q. Did you buy the bicycle before you started at Al Horno or
2 after you started?

3 A. Before I started.

4 Q. Before you were hired?

5 A. Yes.

6 Q. And you said you bought two bikes. Was the first bike
7 stolen, or did you sell the first bike and decide to buy a new
8 one?

9 A. My first one was stolen and then I bought the other one. I
10 was still at Al Horno.

11 Q. OK. You said that you bought a vest to use while you
12 worked at Al Horno?

13 A. Yes.

14 Q. Isn't it true that there were 60 vests in the store that
15 Mr. Pizzimenti bought for delivery people to use for free?

16 A. Yes, but those arrived later on.

17 Q. When did they arrive?

18 A. Like at the end of 2014.

19 Q. Did you see all the vests that were in the store for
20 delivery people to use?

21 A. No.

22 Q. How did you know about them then?

23 A. Ricardo mentioned it, but I didn't see them.

24 Q. Did anyone at Al Horno management tell you that you had to
25 buy a helmet?

IlnWado2

Aranda - Redirect

1 A. No.

2 Q. Do you still have the helmet that you bought when you
3 worked at Al Horno?

4 A. Yes.

5 Q. And do you use it in your new job?

6 A. Yes.

7 MR. HOFFMANN: Thank you, sir. I have nothing
8 further.

9 THE COURT: Mr. Mulholland, anything further?

10 MR. MULHOLLAND: Yes, please.

11 REDIRECT EXAMINATION

12 BY MR. MULHOLLAND:

13 Q. Mr. Aranda, what is your highest level of education?

14 A. I just did elementary school.

15 Q. How many years did you spend in elementary school?

16 A. Like four years.

17 Q. All right. Where was that?

18 A. In Mexico.

19 Q. Where in Mexico?

20 A. In Guerrero.

21 Q. In a city, in a town?

22 A. In a town.

23 Q. How big was the town?

24 A. I don't know how many, but it was a small town.

25 Q. Have you done any education since coming to the United

IlnWado2

Aranda - Redirect

1 States?

2 A. Here, no.

3 Q. The bicycles that you bought, did they have a motor on
4 them?

5 A. No.

6 Q. OK. Neither?

7 A. No.

8 MR. MULHOLLAND: No further questions, your Honor.

9 THE COURT: Anything further for this witness?

10 MR. HOFFMANN: No, your Honor.

11 THE COURT: Thank you, Mr. Aranda. Your testimony is
12 concluded. You may step down.

13 THE WITNESS: Thank you very much.

14 (Witness excused)

15 THE COURT: Call your next witness.

16 MR. MULHOLLAND: Yes, it was the plaintiffs' intention
17 to call Mr. Pizzimenti as an adverse witness.

18 THE COURT: Are you doing that now?

19 MR. MULHOLLAND: Yes, please.

20 MR. HOFFMANN: I would object. I'm going to call him
21 on my direct case. I think things would move a lot quicker if
22 he goes through direct and cross rather than cross and direct
23 and cross again. It's going to be the same testimony.

24 THE COURT: The objection's overruled.

25 Mr. Pizzimenti, would you please come to the witness

IlnWado2

Pizzimenti - Direct

1 stand.

2 MR. HOFFMANN: Could we take -- I just need to use the
3 rest room. Could we take 30 seconds?

4 THE COURT: Actually, it's just about 3:15 now, so
5 we'll take our ten-minute afternoon break now and we will
6 resume at 3:25.

7 MR. HOFFMANN: Thank you.

8 MR. MULHOLLAND: Thank you, your Honor.

9 (Recess)

10 THE COURT: Good afternoon. Please be seated.

11 Mr. Pizzimenti, would you please come to the witness
12 stand.

13 CHRISTOPHER PIZZIMENTI,

14 Defendant, called as a witness on his own behalf,
15 having been duly sworn, testified as follows:

16 THE COURT: You may begin.

17 MR. MULHOLLAND: Thank you, your Honor.

18 DIRECT EXAMINATION

19 BY MR. MULHOLLAND:

20 Q. Mr. Pizzimenti, I'd like to direct your attention to
21 Defendants' Exhibit I --

22 A. Yes.

23 Q. -- binder in front of you.

24 Oh, within that binder, there's a tab I.

25 A. OK.

IlnWado2

Pizzimenti - Direct

1 Q. Do you recognize what that document is?

2 A. Yes.

3 Q. These are the pay stubs that you would have my clients sign
4 to get their weekly pay in 2015, isn't that right?

5 A. Yes.

6 Q. Did you ever issue these statements to my clients?

7 A. Personally, no.

8 Q. Isn't it true that you never, your managers never left a
9 copy for my clients to take with them home?

10 A. That's not true. They made copies.

11 Q. How do you know?

12 A. Because it was part of our practice.

13 Q. Were you ever personally there when they were issued a
14 copy?

15 A. Yes.

16 Q. How many times?

17 A. On occasion. If I happened to be down on payday, I would
18 see, see them being distributed.

19 Q. You would see a copy of these pay stubs handed to my
20 clients so they could take home?

21 A. Yes.

22 Q. How many times did you see that in 2015?

23 A. Several times.

24 Q. When did your company start issuing these pay stubs?

25 A. Around the time shortly after we opened.

IlnWado2

Pizzimenti - Direct

1 Q. Isn't it true that -- withdrawn.

2 Would it surprise you if I told you that the earliest pay
3 stubs in this entire binder start in October of 2014?

4 A. If that's what it is, then I would say it's accurate.

5 Q. OK. You're aware, you're very familiar with the state's
6 wage-and-hour laws, is that correct?

7 A. Yes.

8 Q. Do you know what spread-of-hours pay is?

9 A. Yes.

10 Q. Why do these --

11 MR. HOFFMANN: Your Honor, I'm just going to request
12 that -- if the translator could maybe move down a little bit,
13 because --

14 Your sound is making it hard for me to hear the
15 testimony on the stand.

16 THE INTERPRETER: Yes, but we have one earphone that
17 isn't working, so I don't know what I'm going to do.

18 MR. HOFFMANN: Your Honor, would it be possible if I
19 just moved up closer?

20 THE COURT: You can sit in the jury box.

21 MR. HOFFMANN: Thank you very much.

22 THE INTERPRETER: We'll get one earphone in a second.

23 THE COURT: Did you call down?

24 THE INTERPRETER: No, no. My colleague went down to
25 bring it up.

IlnWado2

Pizzimenti - Direct

1 THE COURT: OK. Great. Thank you.

2 MR. HOFFMANN: Thank you, your Honor.

3 BY MR. MULHOLLAND:

4 Q. Mr. Pizzimenti, you're familiar with spread-of-hours law?

5 A. Yes.

6 Q. You're aware that when someone works over ten hours in a
7 day or has a split shift that spans over ten hours, you have to
8 pay them an extra hour at the minimum wage?

9 A. Yes.

10 Q. On any of the pay stubs in front of you, do you see an
11 entry for spread-of-hour pay?

12 A. Not on these.

13 Q. And why is that?

14 A. It would mean they weren't entitled to a spread pay, spread
15 hour.

16 Q. I'd like to direct your attention to Exhibit -- sorry, page
17 10 of Exhibit I.

18 A. Yes.

19 Q. Do you see that there's a spread-of-hour entry on these pay
20 receipts?

21 A. Yes.

22 Q. I'd like to have you turn one page back, to page 9.

23 A. OK.

24 Q. Do you see a spread-of-hour entry on any of these receipts?

25 A. No.

IlnWado2

Pizzimenti - Direct

1 Q. Would it surprise you if I told you that none of the pay
2 receipts issued by Al Horno included an entry for spread of
3 hours until mid-May of 2015?

4 A. Well, I remember a time we found it easier to have it typed
5 in even though someone didn't qualify for it, instead of
6 having -- in some other cases, let's say, with employees that
7 did get them, they would manually write them in.

8 Q. OK. So how about Mr. -- let's take a look at Mr. Aranda.

9 MR. MULHOLLAND: Actually, you know what? Withdrawn.

10 Q. Let's take a look at --

11 THE COURT: Mr. Pizzimenti, can you move the
12 microphone a little more directly in front of you. Just pull
13 it over a little bit.

14 THE WITNESS: Yes.

15 THE COURT: Thank you.

16 THE WITNESS: You're welcome.

17 BY MR. MULHOLLAND:

18 Q. Let's take a look at Exhibit G. Do you recognize that
19 document?

20 A. Yes.

21 Q. What is it?

22 A. A time record.

23 Q. OK. Could you turn to page -- for who?

24 A. Antonio Aranda.

25 Q. How were these, how was this document generated?

IlnWado2

Pizzimenti - Direct

1 A. From the time clock.

2 Q. And what does it reflect?

3 A. Time worked.

4 Q. Are there any other, any other documents reflecting the
5 hours that my clients may have worked at Al Horno apart from
6 these time receipts?

7 A. Well, this is a full report. There would be an individual
8 report as well that they would sign at the end of the pay
9 period.

10 Q. OK. Could you turn to page 7 of this exhibit.

11 A. OK.

12 Q. Do you see an entry for 11/11/15?

13 A. Yes.

14 Q. OK. So do you see two entries for 11/11/15?

15 A. Yes.

16 Q. Based on your understanding of how spread of hours works,
17 would this worker have been entitled to a spread of hour, hours
18 pay for -- would the worker reflected in this time record have
19 been entitled to spread-of-hours pay for this shift?

20 A. I'd have to calculate the time quick.

21 Q. I think it's there.

22 A. I believe so.

23 Q. OK. So if I take a look at his pay receipt, will I see
24 spread of hours written in there?

25 A. What page is that?

IlnWado2

Pizzimenti - Direct

1 MR. MULHOLLAND: Oh, actually, withdrawn. Let me go
2 back in time. I'm sorry. Sorry.

3 Q. Take a look at G-13. See an entry for 4/22?

4 A. Yes.

5 Q. Would this worker have been entitled to spread of hours for
6 that time period?

7 A. Yes.

8 Q. So if we look at the corresponding pay receipt, will we see
9 spread of hours handwritten in to his pay receipt?

10 A. Which receipt?

11 Q. The pay receipt that he received at the end of the week.

12 A. Which example?

13 Q. The one corresponding to 4/22, 2015.

14 A. I don't know the page of it.

15 MR. MULHOLLAND: You know, let's make it a little
16 easier.

17 Q. Take a look at G-14. There's an entry for March 30, two
18 entries for March 30, 2015. All right? Would this worker have
19 been entitled for spread of hours for that split shift?

20 A. I'm sorry. Which date?

21 Q. 3/30. March 15 -- sorry. March 30.

22 A. Yes.

23 Q. Take a look at the entry right after it, March 31. Would
24 he have been entitled to spread of hours for that day?

25 A. Yes.

IlnWado2

Pizzimenti - Direct

1 Q. And April 1?

2 A. Yes.

3 Q. OK. And what worker is covered by this time record?

4 A. Excuse me?

5 Q. What worker is covered by this time record? Whose time
6 record is this?

7 A. Antonio Aranda.

8 Q. OK. Could you take a look at Exhibit K, page K-09? Take a
9 look at the middle receipt for pay period 3/27 to 4/2, 2015.

10 A. OK.

11 Q. Is there any spread of hours, is there a spread-of-hours
12 entry anywhere on this receipt?

13 A. I don't see it written on this receipt, but I would
14 calculate that, and also I'd like to take a look at the bottom
15 of the receipt.

16 Q. Sure. Take a look at the bottom receipt.

17 Is there any indication from these documents that
18 Mr. Aranda was paid spread of hours for this time period, this
19 week of 3/27 to April 2?

20 MR. HOFFMANN: Your Honor, I think there was a
21 question pending, and he was going to look at the bottom of the
22 sheet. May the witness be allowed to finish looking at it?

23 THE COURT: Did the witness wish to say something
24 further about the receipt at the bottom?

25 THE WITNESS: No.

IlnWado2

Pizzimenti - Direct

1 THE COURT: All right. We'll have the court reporter
2 reread the preceding question.

3 (Record read)

4 A. I don't see it written as spread with a, an amount in
5 there.

6 Q. Is there anywhere I should look to find out where spread
7 of -- Mr. Aranda's spread-of-hour pay is recorded for this time
8 period?

9 A. I'd like to maybe add up his calculations, or -- because
10 it's our practice to pay spread of hours.

11 Q. Isn't it true that Al Horno didn't start paying spread of
12 hours until the middle of May 2015?

13 A. I wouldn't say it was true, because I --

14 Q. Do you have any knowledge of whether it's true or not?

15 A. Well, I instructed everyone to pay it from when we opened
16 the store.

17 Q. Mr. Pizzimenti, you had a background in finance before you
18 moved into the restaurant industry?

19 A. I worked at a bank.

20 Q. You went -- you have a college degree?

21 A. Yes.

22 Q. You have a master's degree?

23 A. No.

24 Q. How many years did you work in, at a bank?

25 A. Maybe three.

IlnWado2

Pizzimenti - Direct

1 Q. All right. Fair to say you're an intelligent,
2 well-educated man?

3 A. I would hope so.

4 Q. All right. And Al Horno wasn't your first restaurant?

5 A. No.

6 Q. How many restaurants had you opened before Al Horno?

7 A. Two.

8 Q. What were their names?

9 A. Stamina and Fuel.

10 Q. And when did you open this first Al Horno? Isn't it true
11 you opened the first Al Horno on 47th Street in April of 2014?

12 A. It was around April or May. I know I was there in April
13 setting the store up.

14 Q. OK.

15 A. But the first sale, I believe, took place sometime in May.

16 Q. You've testified in several lawsuits, isn't that true?

17 A. A few.

18 Q. A few. More than three?

19 A. Yes.

20 Q. I have deposition transcripts here of more than three.

21 A. I'm sorry. Could I ask a question?

22 Q. Yeah.

23 A. Did you mean in relation to labor or in general?

24 Q. Just in general.

25 A. Yeah, I would say it's -- yeah, more than three.

IlnWado2

Pizzimenti - Direct

1 Q. OK. And isn't it true that you've testified at least in a
2 couple of places that Al Horno was opened in April of 2014?

3 A. I've always said it was April and May.

4 Q. OK. So if I showed you a deposition transcript where you
5 only said April 2014, would that refresh your memory?

6 A. Yes.

7 Q. OK. We'll get back to that.

8 Who is Jimmy Sanchez?

9 A. He was a managing partner.

10 Q. Isn't it true that he owned a piece of Al Horno when it was
11 first opened?

12 A. Yes.

13 Q. All right. And isn't it true that he was in charge of
14 opening Al Horno in April -- I'm sorry.

15 Isn't it true that Jimmy Sanchez was in charge of opening Al
16 Horno back in April of 2014?

17 A. Along with myself.

18 Q. All right. Well, isn't it true that it was Jimmy Sanchez
19 who did all the hiring for the first generation of workers for
20 the 47th Street location of Al Horno?

21 A. Yes.

22 Q. And isn't it true that Jimmy Sanchez stopped working at Al
23 Horno around July of 2014?

24 A. Yes.

25 Q. Isn't it true that Jimmy Sanchez initiated a lawsuit

IlnWado2

Pizzimenti - Direct

1 against you predicated on various theories?

2 A. Yes.

3 Q. And didn't some of those lawsuits pertain to your business
4 practice, your businesses of Fuel Express, Stamina and also Al
5 Horno?

6 A. It was just Fuel and Al Horno, and then he dropped the
7 charges against me.

8 Q. They weren't criminal charges, though, were they?

9 A. No. I guess they're claims, if you want to call them.

10 Q. We will call them claims.

11 A. OK.

12 Q. Have you ever been convicted of a crime involving perjury
13 or forgery or fraud?

14 A. No.

15 Q. You didn't spend much time at the 47th Street location of
16 Al Horno?

17 A. I was always in and out.

18 Q. When you say in and out, isn't it true that you would come
19 in maybe once every two weeks for an hour?

20 A. I couldn't tell you exactly.

21 Q. Well, you remember testifying under oath at Mr. Hoffmann's
22 office during a deposition that I was conducting, right?

23 A. I remember.

24 THE COURT: Do you have a copy for me?

25 MR. MULHOLLAND: I have a copy.

IlnWado2

Pizzimenti - Direct

1 THE COURT: Mr. Hoffmann, do you have your copy out?

2 MR. HOFFMANN: Yes.

3 MR. MULHOLLAND: Page 18.

4 THE COURT: Looks like we can proceed.

5 MR. MULHOLLAND: OK. Thank you. Page 18, line 22 --
6 sorry, line 21 to 25.

7 Q. I'm going to read this to you, Mr. Pizzimenti.

8 A. I'm sorry. Can I see it, please, too?

9 MR. MULHOLLAND: Yeah. I don't think I have a copy
10 for the witness.

11 THE WITNESS: Thank you.

12 MR. MULHOLLAND: Thank you, your Honor.

13 Page 18, line 21 to 25:

14 "Q. How often were you on site at 47?

15 "A. I can't say for sure, but it would be once every couple of
16 weeks.

17 "Q. When did you go once every couple of weeks --"

18 I'm sorry.

19 "Q. When you did go every couple of weeks, how long would you
20 stay?"

21 Turning over to page 19, line 2:

22 "A. About an hour."

23 Q. Do you remember telling me that?

24 A. No, but if it's here, then I said it.

25 Q. Is it accurate?

IlnWado2

Pizzimenti - Direct

1 A. It could be, because I was, I was going to get -- I got
2 married in August 2014, so it would make sense. Between other
3 work that I had going on and that, sounds about right.

4 Q. All right.

5 A. And like I said, I still maintain that I was in and out of
6 the store.

7 Q. Isn't it fair to say that Jimmy Sanchez kept you in the
8 dark about a lot of his dealings with Al Horno early on,
9 between April and July of 2014?

10 A. I know that we -- we met and I told him how things need to
11 be done, and when I saw how things were being done, I
12 definitely wasn't satisfied with it.

13 Q. OK. Isn't it fair to say that Al Horno probably was not,
14 was not honoring the proper New York Labor Law pay practices
15 until late 2015, if at all?

16 A. I wouldn't say that, because the way he was doing things I
17 just thought needed much more improvement, just because of kind
18 of what I know in this space, and those were the things that I
19 confronted him on.

20 Q. Isn't it fair to say you were a pretty much hands-off
21 manager of 47th Street and the 57th Street locations for the
22 bulk of 2015?

23 A. It -- well, if you want to say like day-to-day operation,
24 then yes.

25 Q. Yeah.

IlnWado2

Pizzimenti - Direct

1 A. I wasn't in the store, let's say, doing like the daily
2 tasks and stuff like that.

3 Q. So then it's fair to say you don't have a lot of personal
4 knowledge of how my clients spent their time at Al Horno?

5 A. I can say in general how the employees, how we instructed
6 management and upper management to handle and how to run the
7 store and the operation --

8 Q. But that's --

9 A. -- with certainty.

10 Q. But that's not the same. Having personal knowledge of the
11 instructions that you issued is certainly different from having
12 personal knowledge of how my clients actually spent their time,
13 isn't it?

14 A. Well, we would -- spent regular, regular time, let's say,
15 if not face to face, on the phone about the way the store was
16 being run and needs to be run.

17 Q. But you yourself didn't witness the day-to-day activities
18 of my clients?

19 A. When I would be in the stores, I would see what was going
20 on, for sure. I knew what was going on, and I have a camera
21 system on my phone --

22 Q. When you did you install the --

23 A. -- to actually monitor --

24 Q. When did you install the camera system on your phone?

25 A. That was when we opened.

IlnWado2

Pizzimenti - Direct

1 Q. What was that?

2 A. From when we opened.

3 Q. And how often would you have looked at that camera system?

4 A. Looked at the cameras every day.

5 Q. How often during the day?

6 A. Multiple times in a day.

7 Q. Well, not while driving.

8 A. Not while driving.

9 Q. OK. I want to ask you about Mr. Zakari. It's true that

10 Mr. Zakari's been an employee of at least one of your

11 restaurants for a long period of time?

12 A. Yes.

13 Q. All right. And he has since risen to become a manager for
14 you?

15 A. He did.

16 Q. Yeah, but he didn't become a manager until the middle of
17 2015, isn't that true?

18 A. No.

19 Q. Isn't it true that you told me something different in our
20 deposition?

21 A. I don't really remember talking about Djibril.

22 Q. How long has Djibril been acting in his capacity as a
23 manager at Al Horno?

24 A. Since May of 2014.

25 Q. Since May of 2014?

IlnWado2

Pizzimenti - Direct

1 A. Yeah. He was more of a -- we called him a supervisor, and
2 then we called him the head of operations, but not the actual
3 store manager.

4 Q. So what was his role at Al Horno in May of 2014?

5 A. He was like an extended role of myself, so that's why we
6 said he was the head of operations.

7 Q. Did he have the power to hire -- withdrawn.

8 What location was he assigned to in May of 2014?

9 A. At that time, 47th Street.

10 Q. Isn't it, in fact, true that Djibril worked at a different
11 restaurant for you at that time, and his role was
12 front-of-the-house worker rather than someone with any kind of
13 managerial authority?

14 A. He definitely split his time.

15 Q. Between where?

16 A. My Stamina store and 47th Street.

17 Q. What did he do at Stamina in May of 2014?

18 A. Same thing. At that time, I needed an extended role of
19 myself.

20 Q. OK. So how much time --

21 A. That's how I would describe it.

22 I'm sorry.

23 Q. Sir, you did actually talk about Djibril in your
24 deposition. I'd like to read you a section from it.

25 A. Sure.

IlnWado2

Pizzimenti - Direct

1 Q. This is page 57, lines 16 through 25.

2 THE COURT: Did you want to look at that again?

3 THE WITNESS: Yeah, thanks.

4 A. I'm sorry. What page?

5 Q. 57. Actually, let's start with lines 13 through 25.

6 A. OK.

7 MR. MULHOLLAND: All right.

8 "Q. Are there any other managers besides whom we talked about
9 today and Djibril?

10 "No.

11 "Q. How long did Djibril work for you?

12 "A. I believe since we opened, but not in that capacity. He
13 was a regular front-staff worker, packer, and then we had given
14 him more administrative duties. He is the one who, who -- he
15 had hire-fire capabilities. He reviews this stuff. We talk
16 about it a lot, as far as labor law, keeping up on labor-law
17 changes every year. He is, he has the same conversations
18 with --"

19 Turning over to page 58:

20 "-- managers, I've had it with managers."

21 Q. What did you mean when you told me that he was with you
22 when, you believed since you opened, but not in that capacity?
23 What did you mean by that?

24 A. Well, I think when we first opened, the idea to Jimmy of
25 having this person who, you know, was, well, let's say, split

IlnWado2

Pizzimenti - Direct

1 responsibility with him, I don't think he was too crazy about
2 it, but you're talking, like, after the first week of being
3 there. We -- you can see what I say right after that. We
4 quickly, very quickly got him into the position I just
5 mentioned before.

6 Q. You told me he was a regular front-staff worker and a
7 packer and that it was later that you'd give him more
8 administrative duties. Was that period of time, did you mean
9 like one week?

10 A. Yeah, it was quickly after that.

11 Q. OK. So when you told me, "I believe since we opened, but
12 not in that capacity, he was a regular front-staff worker," you
13 meant he was not in a managerial -- he didn't have a managerial
14 capacity for, like, one single week?

15 A. Well, I remember it being an issue, so there was a store
16 manager, and then there was --

17 Q. Mr. Pizzimenti, you're in federal court.

18 MR. HOFFMANN: Objection.

19 A. Yeah.

20 MR. HOFFMANN: Let the witness finish his answer.

21 A. I'm just --

22 THE WITNESS: Yeah.

23 THE COURT: Are you asking for yes-or-no answers, or
24 are you asking for narrative answers?

25 MR. MULHOLLAND: I would like to withdraw and ask a

IlnWado2

Pizzimenti - Direct

1 yes-or-no question, your Honor.

2 THE COURT: You may.

3 BY MR. MULHOLLAND:

4 Q. Isn't it true that you did not give Mr. Zakari any
5 administrative duties until the middle of 2015 and that prior
6 to that time, he was a front-of-the-house worker?

7 A. That's not true.

8 Q. Do you have any document reflecting his promotion?

9 A. Well, the fact, the fact that he was issuing the pay-rate
10 sheets from the very beginning.

11 Q. Uh-huh.

12 A. You know, like I said, you have to kind of go back in time
13 and understand the circumstances. Jimmy --

14 Q. Where was he --

15 THE COURT: No.

16 Q. Where was he a front-staff worker?

17 THE COURT: Let him finish his sentence.

18 MR. MULHOLLAND: Sorry.

19 THE COURT: Had you finished that answer?

20 THE WITNESS: No.

21 THE COURT: You can finish your answer.

22 A. So Jimmy was not only managing partner, he was an equity
23 owner in the company, and it -- I remember the topic being
24 sensitive. And I remember shortly after we opened, there were
25 things that were red flags with Jimmy from the beginning, and

IlnWado2

Pizzimenti - Direct

1 that's why, if you think about it, we opened, let's say, in
2 May, and he's out by mid-July. Why would that happen? And
3 then why would he bring claims against me that would later,
4 that he decided to drop?

5 So it was a very sticky situation around that time, and
6 there were a lot of things I can get into why it didn't make
7 sense for him to be there, and that's what transpired. And
8 that's why Djibril had to step into a more extended role of
9 myself, because I had a hard time, you know, doing everything
10 by myself. I'm one guy; it just wasn't possible.

11 Q. When did Mr. Zakari step into his administrative role?

12 A. In May of 2014.

13 Q. When you opened?

14 A. Shortly after that. We opened early May, then he stepped
15 into that maybe mid-May.

16 Q. OK. Where was Mr. Zakari a front-staff worker?

17 A. In Stamina and 47th Street.

18 Q. For how long?

19 A. Stamina, I would say maybe a year.

20 Q. OK. Where was he a packer?

21 A. I'm sorry. Even before Stamina, he worked with me at Fuel.
22 He, he started as a delivery person, and I just, you know, grew
23 to really like him, the way he works, and so I gradually, as we
24 grew pretty quickly, I -- he was constantly being promoted,
25 delivery, packer, supervisor.

IlnWado2

Pizzimenti - Direct

1 I mean, if you -- when you talk to him, you'll see. Now
2 he's the head of operations for all of our stores, next to me.

3 Q. What were his duties in the summer of 2014 at the 47th
4 Street location?

5 A. Well, he did all kinds of duties, I would say, when he was
6 there. He's not the type to do nothing, so he would still be
7 doing those duties in addition to --

8 Q. Yeah, but which? Name a single duty in the summer of 2014
9 that he fulfilled at the 47th Street location of Al Horno.

10 A. He would definitely pack, send out deliveries. He would --
11 he was very involved in a lot of the labor stuff, these
12 pay-rate sheets, the pay stubs. Everything that I worked on
13 for the operations for the stores, it would pass through him,
14 and then that's kind of how we ran -- that's how we ran the
15 business.

16 Q. So in the summer of 2014, Mr. Zakari would be packing
17 orders, and then every now and then, he would hand out annual
18 wage notices; that's the extent of his duties in the summer of
19 2014 as a manager?

20 A. Yeah. I mean, you got to understand, it's a very small
21 store. We're not like this big corporate store on Broadway.
22 We're a small, 900-square-foot store on a residential Street
23 between Ninth and Tenth Avenue, so he wouldn't be there -- and
24 that's the kind of guy he is and that's the kind of guy I am.
25 If I'm in the store, I'm packing orders. So he wouldn't be in

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Pizzimenti - Direct

1 this small store just doing nothing. He would be giving a
2 helping hand and doing other responsibilities. Most managers
3 do.

4 Q. How much time would he spend at the 47th Street location on
5 a weekly basis during the summer of 2014?

6 A. You know, I really couldn't tell you exactly how much time.

7 Q. How much time did he spend at Stamina? You said he had the
8 same role at Stamina, correct?

9 A. Well, if he spent three to four hours at 47th Street, he
10 would do about the same at the other store. He would split his
11 day, and he still does. He still splits his days up,
12 locations.

13 Q. OK. Isn't it true he was front-of-the-house worker at
14 Stamina until the middle of 2015 and didn't come over to Al
15 Horno until early 2015 as a front-of-the-house worker?

16 A. That's not true. He worked between both places. I really
17 needed someone to do that, and besides what I needed, he was
18 the right guy for it.

19 Q. Did he hire anybody?

20 A. And he was the right guy to do it.

21 THE COURT: I'll have to ask both of you to slow it
22 down just a bit more. Thank you.

23 BY MR. MULHOLLAND:

24 Q. Did Mr. Zakari hire anybody in 2014 at the 47th Street
25 location?

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Pizzimenti - Direct

1 A. Yes.

2 Q. Who?

3 A. I couldn't tell you exactly who, but he had that ability,
4 to do that.

5 Q. All right. How many people did he hire in 2014?

6 A. I can't tell you for sure.

7 Q. Did he fire anybody in 2014?

8 A. I don't know.

9 Q. Did you take away 3 percent of any credit card tips from
10 the -- my clients here during the time at Al Horno?

11 A. They were --

12 MR. HOFFMANN: Objection as to form.

13 THE COURT: You can speak with Mr. Mulholland.

14 BY MR. MULHOLLAND:

15 Q. Was it the practice of the management at Al Horno to
16 discount 3 percent of the value of tips that were paid by
17 credit card to the delivery workers?

18 A. I don't know if I would call it a discount, but we did take
19 3 percent off of tips, because we never received that 3 percent
20 of tips.

21 Q. Could we take a look at defendants' K-9. Should be page --
22 I believe where we left off, page 9. Do you see the top
23 document there where it says deductions 3 percent?

24 A. Yes.

25 Q. Did you ever provide any of my clients these notices in

IlnWado2

Pizzimenti - Direct

1 Spanish?

2 A. The pay stubs?

3 Q. Yeah.

4 A. We present them the way you see them here.

5 Q. OK. How do I know that you never saw that 3 percent?

6 MR. HOFFMANN: Objection.

7 A. I'm aware of the 3 percent.

8 MR. HOFFMANN: I'm sorry. I object.

9 BY MR. MULHOLLAND:

10 Q. How can I know from the documents that the defendants have
11 presented as evidence --

12 MR. HOFFMANN: That's fair.

13 Q. -- that Seamless or Grubhub charged, made a service charge
14 of 3 percent?

15 A. We made them aware of it on the pay-rate sheet.

16 Q. No, but how can I know, as an outside observer? In all
17 these documents that you prepared to bring to court today, have
18 you attached a credit card agreement or an agreement with
19 Grubhub or Seamless to document the amount of the service
20 charge?

21 A. For one, it ties back to the pay-rate sheet, and that's why
22 I emailed the labor department. We can actually fill it in on
23 there, and they said, yes, we could document any of these
24 deductions on the pay-rate sheet to inform the employees of why
25 we're doing it.

IlnWado2

Pizzimenti - Direct

1 And I did happen to bring the Grubhub agreement with us
2 along with an email from early on, when it -- since we've been
3 operating, that says our credit card processing fee that we
4 charge to the entire order -- food total, tax, tip -- is 3.04
5 percent. And so -- for our credit card company, it's actually
6 3 percent as well. So instead of charging 3.04 percent, we
7 said we'll put 3 percent instead, so we never charged the .04
8 percent.

9 Q. But is that agreement in evidence? Was it produced during
10 discovery?

11 A. I don't -- I don't know what -- I definitely have it with
12 me today.

13 Q. What services did Al Horno use to make orders besides
14 Grubhub?

15 A. Seamless.

16 Q. Any others?

17 A. Delivery.com.

18 Q. Any others?

19 A. At that time Eat24. That would mostly be it.

20 Q. Do you have service agreements from all those companies?

21 A. Well, I have them, not with me. I have the Grubhub,
22 Seamless one, but you have to understand, too, that between
23 credit card sales and Seamless and Grubhub, it's 99.5 percent
24 of our business. And I can tell you that on Eat24 and
25 Delivery.com, it's also a 3 percent processing fee, because

IlnWado2

Pizzimenti - Direct

1 when -- I'll explain it. Can I?

2 Q. No. I understand --

3 A. OK.

4 Q. -- what service fees come from, and I understand why you're
5 trying to apply it. I'm just confused. I mean, you
6 understand -- you're very familiar with the wage-and-hours
7 laws?

8 A. Yes.

9 Q. So you understand it's the employer's burden to prove their
10 right to take deductions and take a tip credit?

11 A. Yes.

12 Q. So I'm wondering where these service agreements are so that
13 I can verify that my clients are being deducted at the proper
14 rate for all the services to which they would be getting tips.

15 A. Would you mind taking a look at the one that I brought?

16 Q. Well, I would mind at this juncture, because we're at trial
17 and we have exhibits in evidence, and I relied on those to
18 prepare the case.

19 A. OK.

20 Q. Did you ever personally sit down with my clients and
21 explain to them how the tip-credit system works?

22 A. I didn't personally.

23 Q. Did the opening time for Al Horno on 47th Street ever
24 change from seven in the morning to eight in the morning?

25 A. I believe it did.

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1 Q. Do you recall when?

2 A. Had to be real early on, because we realized that opening
3 at seven just wasn't worth it. We were doing not that many
4 orders.

5 Q. Because -- OK.

6 Isn't it true there weren't many deliveries between 7:00
7 and 10:00 in the morning?

8 A. I'd say about ten, and that wasn't worth it for us.

9 Q. How long was Ricardo with you?

10 A. Say about a year.

11 Q. OK. So when did he start working for you? Withdrawn.

12 Isn't it true that Ricardo started working for you right
13 after Jimmy left, in July 2014?

14 A. Yes.

15 Q. And is it your testimony that Ricardo left in July, around
16 July of 2015?

17 A. You know, I really can't say for sure when he left, because
18 he was a student and he definitely did work on and off,
19 especially towards the end.

20 Q. Do you remember approximately when Ricardo left, a season,
21 a year?

22 A. If I were to give you an answer, I'd be guessing.

23 Q. OK. Why did you change your pay practices in 2016 where
24 you moved from using personal checks to a Paychex system? When
25 I say paychecks, I mean P-A-Y-C-H-E-X.

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Pizzimenti - Direct

1 A. Right. It was just a much more efficient system, and that
2 was one of the main reasons why.

3 Q. Isn't it true that you realized that Al Horno had not been
4 using proper pay practices between 2014 and 2015 and that you
5 moved to Paychex to protect yourself?

6 A. Well, if you think about photocopying these stubs all the
7 time, it was very work intensive, and moving to Paychex just
8 made a lot more sense operationally for us.

9 Q. So you're telling, you were telling us that my clients
10 received copies of these pay stubs every week, right?

11 A. Yes.

12 Q. Are you trying to say those copies were made by a photocopy
13 machine within the premises every week?

14 A. Yes.

15 Q. OK. How much did -- were my clients paid in 2014, in May
16 of 2014; what was their hourly rate of pay?

17 A. So the way we do it is we actually take the minimum wage,
18 and that's what we call the minimum wage, and then we apply the
19 tip credit, if it applies.

20 Q. My clients told the Court that they were paid \$5 an hour in
21 cash for the first few months of 2014 while Al Horno was open.
22 Do you have any knowledge about why that might not be true?

23 A. I just think that -- let's say before our stubs, we
24 documented pay differently, so anyone could say, Hey, you know,
25 this was this and that was that. And that's, that's what I

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1 think.

2 Q. Isn't it true that prior to October of 2014, pay was
3 documented on handwritten sheets of paper by whatever manager
4 happened to be around that day?

5 A. Well, I know they were keeping a schedule and track of the
6 hours with the guys, and I know for sure that if there was ever
7 an issue with hours, or people feel like it wasn't tracked
8 properly while we were implementing our time clock, which is --
9 you're talking really early on, when we first opened, and I
10 kind of want -- I want you to understand, like, when we first
11 opened, the -- what it entails to open a store and to get all
12 the systems up and running. And so that's what we're up
13 against, and we definitely did still track time. If it was on
14 paper, through the guys, and we just didn't track it the way we
15 are now. This is, you know, this was --

16 Q. Not the --

17 A. -- the best solution we came up with.

18 Q. Would it be fair to say it's not the right way?

19 A. I wouldn't say that.

20 Q. All right.

21 A. I can --

22 Q. Do you have a copy --

23 A. I can tell you that whatever hours they worked, we still
24 applied the labor law to the time that they worked.

25 Q. I understand.

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1 Do you have a copy of the second binder of defendants'
2 exhibits? Is there a second binder up there?

3 A. Oh, yeah. In front.

4 Q. That's my binder for my --

5 THE COURT: There's something blue here on the other
6 side of the monitor. Is that what you want him to look at?

7 MR. MULHOLLAND: Oh, maybe. Yeah.

8 THE INTERPRETER: Excuse me, your Honor. Could you
9 ask the witness or the attorney to move the monitor over a
10 little bit so the interpreter can see the mouth of the witness,
11 and face? Thank you.

12 THE COURT: Is that better?

13 THE INTERPRETER: Yes.

14 THE COURT: OK. Good.

15 BY MR. MULHOLLAND:

16 Q. Could you turn to Exhibit V?

17 THE COURT: V as in Victor?

18 MR. MULHOLLAND: V as in Victor, yes. Actually, you
19 know what? Scratch that.

20 Q. Make that Exhibit U, Exhibit U as in --

21 A. I think it's in this book.

22 Q. The second one, yes.

23 A. OK.

24 Q. Isn't it true that this piece of paper here reflects the
25 manner in which Al Horno kept time-and-pay records between

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1 April of 2014 and October 2014?

2 A. I'm not sure if this is the actual sheet we used to track
3 it, but it definitely has on there hours and what seems to be
4 tip amounts as well.

5 Q. Isn't it true that you don't know whether this is the
6 actual records that were being used at that time because you
7 were hardly ever at Al Horno during that period of time?

8 A. Well, from this, I can just see that it's writing down
9 hours and tip amounts.

10 Q. OK.

11 A. But, you know what, we --

12 Q. Did you --

13 A. There's also a book. We had a notebook that also kept
14 record of the hours worked and the tip amounts that employees
15 would also refer to, and that I'm sure of.

16 Q. Which exhibit is that?

17 A. I -- I don't know. I have to go through all the exhibits.

18 Q. I'm sure we'll get to it.

19 A. And I know, I know Jimmy kept that book as well.

20 Q. OK, but Jimmy left in July of 2014, correct?

21 A. He did.

22 Q. Did he take the book with him?

23 A. Possibly, because we didn't leave on the best terms.

24 Q. Who was taking care of -- who was keeping track of my
25 clients' hours between July of 2014 and October of 2014?

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1 A. Well, we had the time clock implemented by then.

2 Q. OK. Why is it that we don't see any of my clients enter
3 their times in the machine until August of 2016 -- August of
4 2014?

5 A. You just said October.

6 Q. Well, October 2014 is when Al Horno started to use these
7 pay receipts, but there were no time stamps until August of
8 2014. Both Mr. Ceferino and Mr. Hermenegildo, they both
9 started using the time-clock machine around August 2014, when
10 it --

11 A. That would only be a couple of weeks, I would say, into
12 when they started, because at first, we were using a card
13 system, and we had a lot of issues with it. But that doesn't
14 suggest that we weren't paying according to their time. We
15 just had a system -- we were a brand-new company -- that the
16 cards weren't working for us the best way, so we improved the
17 system.

18 You know, I wish I can tell you that everything's perfect
19 from day 1, but realistically, it's not, especially when you're
20 just, you know, a small company that's starting out, to get
21 everything right. I can tell you even our food wasn't perfect
22 in the first month. I can tell you a lot of things that
23 weren't perfect, but we were aware that the cards was not the
24 best system, and so we moved over to PINs. And I think that's
25 why, you know, couple weeks into when they started, you can see

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1 the time clock being punched, but I can assure you that we
2 still tracked their time before that, and we paid according to
3 the time they worked. We don't have any reason not to.

4 Q. OK. When did Mr. Hermenegildo Mercenario start working at
5 Al Horno?

6 A. I'm not sure.

7 Q. When did German Mercenario begin working at Al Horno?

8 A. I'm not sure, but I can tell you that we were taking on
9 delivery guys in July.

10 Q. When did Ceferino Adonias start working at Al Horno?

11 A. I'm not sure.

12 Q. When did Mr. Aranda start working at Al Horno?

13 A. Exact dates, I -- exact dates, I couldn't tell you.

14 Q. Do you remember when my clients left your employ?

15 A. But let me say this. The sheets should reflect the dates
16 that they started. That's why we have them, so we do it upon
17 hiring, any raises or any, any natural raises, any change in
18 pay and any -- any change in, in minimum wage, we would issue
19 these sheets.

20 Actually, this one in front of me says at hiring.

21 Q. You wouldn't personally give anyone these sheets, though,
22 would you?

23 A. I didn't, but I instructed the staff to do it, and like I
24 said, so I couldn't tell you off the top of my head when guys
25 were hired, but that is why we, we have the paperwork. I

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1 mean --

2 THE COURT: You're holding something in your hand and
3 referring to it. Does it have an exhibit letter or number on
4 it?

5 THE WITNESS: Yeah, Defendants' Exhibit A.

6 THE COURT: Thank you.

7 BY MR. MULHOLLAND:

8 Q. Let me ask you. While we're talking about notices, why
9 don't we take a look at the notices for Mr. Aranda, which are
10 located at Exhibit C.

11 A. OK.

12 THE COURT: That's back in the first notebook?

13 MR. MULHOLLAND: Yes, in the first notebook.

14 Q. Take a look at No. 4, defendants' C-4.

15 A. OK.

16 MR. MULHOLLAND: I'm just pulling my phone out, your
17 Honor, to use the calculator.

18 Q. When was this notice issued to my client, Mr. Aranda?

19 A. So, there was a point in time when the minimum wage was
20 increased to \$9, and the tip credit was 3.10, so that would
21 be -- that would be when this happened.

22 Q. How much did you pay Mr. Aranda in 2016?

23 A. I have to look at the exhibit.

24 Q. Would it surprise you if I told you that your records
25 reflect that you were paying Mr. Aranda 7.50 an hour in 2016?

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1 A. It was a time when the tip credit changed from, from 3.10
2 to \$1.50.

3 Q. Do you have any notice in here from Mr. Aranda that
4 reflects a \$9 minimum wage with a 1.50 tip credit?

5 A. I don't see it in this exhibit, but we have them for every
6 other wage increase, so it was our practice that we would issue
7 it if there was another change in tip credit.

8 Q. Did you ever pay Mr. Aranda 5.90 an hour?

9 A. That would -- that would imply that the minimum wage was \$9
10 with a 3.10 tip credit.

11 Q. What is reflected here in Defendants' Exhibit C-4, if not
12 that?

13 A. That implies a \$9 wage with a 3.10 tip credit, so --

14 Q. Did you ever pay Mr. Aranda at that rate?

15 A. If that was the law at the time, then that's what we paid
16 him.

17 Q. OK. So would it surprise you to learn that your records
18 show you paid him 7.50 an hour during that time?

19 A. So we paid him more.

20 Q. OK. Would you agree that this notice as written is a
21 little confusing regarding what his rate of pay was going to be
22 during this period of time?

23 A. Well, I can tell you this. Labor laws and wages have
24 changed a lot over the last few years, so sometimes it could be
25 very confusing. And there's been times when we would issue

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1 them, and then we would say, Hey, you know, that tip credit
2 is -- actually applies to hotel workers, and we need to
3 issue -- we got it wrong. And there was times when we actually
4 got it wrong -- I don't know in your guys' case, but we got it
5 wrong, and -- we had the tip credit wrong, and we issued checks
6 to pay the few weeks that we were operating at it wrong.

7 So there's definitely times when if we got a pay-rate sheet
8 wrong, we would definitely reissue them, because you got to
9 understand, like, the nature of how I operate too. I -- I'm on
10 top of this stuff. So, you know, anyone could interpret it a
11 little wrong, and I think most people would admit that it's
12 changed a lot over the last few years, and it could be
13 confusing, but we get it right, and --

14 Q. But not for this, not for this man?

15 A. Well, you're saying we paid him 5.90, and then you're
16 saying that it reflects 7.50, so if we compare, if we look up
17 the law and see the wage with the proper tip credit, I would
18 guarantee that whatever he's being paid reflects the law at
19 that time period. I would guarantee that.

20 Q. So perhaps the records will speak for themselves?

21 A. Yeah.

22 Q. I'd like you to take a look, if you could, at Defendants'
23 Exhibit D. These are the annual notices for Mr. Hermenegildo
24 Mercenario.

25 It's fair to say that the minimum wage in 2015 was 8.75 per

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1 hour, is that correct?

2 A. OK.

3 Q. Is there a notice in this exhibit for Mr. Mercenario that
4 reflects an \$8.75 minimum wage?

5 A. Do you recall what the tip credit was? When it was 8.75?

6 Q. It would have been 2.35?

7 A. No.

8 Q. One second. The chart --

9 MR. HOFFMANN: Are you asking about 2015?

10 (Discussion off the record)

11 BY MR. MULHOLLAND:

12 Q. So the tip credit in 2015 was -- for service employees was
13 3.10.

14 A. OK.

15 Q. So -- and the minimum wage, prevailing minimum wage was
16 8.75?

17 A. Well --

18 Q. Is there a notice here for Mr. Mercenario, Mr. Hermenegildo
19 Mercenario, that reflects those rates?

20 A. I think I would argue with you on that. I think if you had
21 a certain amount of employees, it was 8.75, but if you were
22 below the amount of employees, it would be 9.

23 Q. In 2015?

24 A. I believe so.

25 Q. Isn't it true that that particular law came into play

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1 toward the end of 2016?

2 A. I have to go through the chart as well.

3 Q. Well, you spoke with the New York State Department of Labor
4 on a regular basis, correct?

5 A. I did.

6 Q. All right.

7 A. But --

8 Q. So they provided you with the charts that they have --

9 A. -- I have --

10 Q. -- for prevailing minimum wage and tip credit rates for
11 every year going back to 2011?

12 A. I'll be honest. I can't memorize every year and every
13 change, but --

14 Q. Well --

15 A. -- if it was at that year and at that time, then we
16 followed that. Or else we wouldn't be doing pay-rate sheets
17 and tip credit and spread hours of these stubs. And I would go
18 through the stubs and the law, if you have a copy of it, and we
19 can compare the time periods, and that I can guarantee would be
20 accurate.

21 Q. So can you guarantee that there's an annual notice for 2015
22 for my client, Mr. Hermenegildo Mercenario?

23 A. I'd really have to go back to the law and the wage and the
24 tip credit and then tie it back to this.

25 Q. So again, the documents will speak for themselves, is that

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1 correct?

2 A. Yeah.

3 THE COURT: Mr. Mulholland, you have one hour and five
4 minutes left of your seven and a half hours.

5 MR. MULHOLLAND: OK. Thank you, your Honor.

6 A. I mean, I -- OK.

7 Q. OK. Did you ever tell Mr. Aranda that you were going to be
8 withholding a part of a tip for a large catering order?

9 A. Well, I thought -- since I've heard so much about it in
10 this testimony, I thought about it, and I definitely recall
11 situations where that popped up, that concern of the guys. I
12 don't remember speaking to any of them myself, because of
13 language barrier, but I remember the situation on what it was
14 when it did happen.

15 Q. Is it true that the employees would complain to you about
16 Samuel taking their tips on these orders?

17 A. So the complaint that I recall, especially with, with the
18 guys here, was that when we sent an in-house person on a
19 delivery on a large order, that would require naturally more
20 than one person, we would definitely give a portion of the tip
21 to, let's say, a cashier, only because we felt that was in
22 compliance with tip law, because an employee is, is now
23 operating on a tip duty, let's say. And the guys were not
24 happy about that.

25 Q. How often would you instruct your staff to share tips with

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1 cashiers?

2 A. Whenever cashiers took deliveries with another delivery
3 person. And if a cashier ever took a delivery without anybody
4 else, we would give them that tip. That's our practice.

5 Q. All right. Isn't it true that sometimes you would instruct
6 your -- withdrawn.

7 Isn't it true that sometimes Samuel would share tips with
8 the cooks?

9 A. No.

10 Q. You never heard a complaint from any of the delivery people
11 that the tips were being shared with the cooks?

12 A. If we were super-busy and a cook happened to take a
13 delivery, the cook would get a portion of the tip.

14 Q. Was Samuel a manager?

15 A. Yes.

16 Q. How long was he manager at Al Horno for?

17 A. He became manager around the time Ricardo was leaving, and
18 he's still the manager today.

19 Q. OK. What's his position -- what's his title today?

20 A. Manager.

21 Q. Is it his full-time job?

22 A. He works about 40 hours a week.

23 Q. Does he have any -- does he have a second job that you're
24 aware of?

25 A. I don't think so.

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1 Q. Does he work at any of your other restaurants?

2 A. No.

3 Q. Does he have an ownership interest in Al Horno?

4 A. No.

5 Q. OK.

6 A. And can I say one thing?

7 Q. Sure.

8 A. You got to understand, these are tips that are electronic.
9 They're on paper. They're not cash, so I don't know how he
10 would even steal them. He doesn't have access. It's not
11 physical money. It's printed on a piece of paper.

12 Q. I understand.

13 One last question about Mr. Zakari. You know Mr. Zakari
14 pretty well, right?

15 A. Yes.

16 Q. He's been a trusted confidant for some years now?

17 A. And a good friend.

18 Q. And a good friend.

19 A. Yup.

20 Q. And you recognize his handwriting?

21 A. I do.

22 Q. All right. So why don't you -- I'm going to ask you to
23 take a look at Exhibit C, which are the notices for Mr. Aranda.
24 I'm going to ask you to take out C-1. Take it out from the
25 three rings and hold it next to C-2 so that the signature lines

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1 line up between the one for, supposedly for Mr. Gomez and the
2 one for Mr. Zakari.

3 A. OK.

4 Q. All right. Do you recognize the handwriting of Mr. Zakari
5 on C-2?

6 A. Yes.

7 Q. And the handwriting used to write the name Ricardo Gomez,
8 does that look familiar to you?

9 A. Yeah.

10 Q. Does it look like Mr. Zakari's handwriting or someone
11 else's?

12 A. It -- I'll tell you the truth, I'm not a handwriting
13 expert, but I -- glance, it looks like they're different
14 people.

15 Q. OK. Are you familiar with Mr. Gomez's handwriting?

16 A. I can't tell you that I'm familiar with his handwriting.

17 Q. OK.

18 A. But it looks like he -- someone signed this one; I would
19 assume that was Ricardo. And I would assume that this one was
20 Djibril.

21 Q. Is there any reason why the only ones with Ricardo's name
22 are for Mr. Aranda?

23 A. Well, I can tell you this. As part of our practice,
24 Djibril spent time with all managers, and he would be present
25 too with Ricardo translating or Samuel or -- well, Samuel and

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1 Ricardo, because he's not fluent in Spanish.

2 Q. Who is that?

3 A. Djibril is not fluent in Spanish.

4 Q. OK.

5 MR. MULHOLLAND: No further questions, your Honor.

6 Thank you.

7 Thanks, Mr. Pizzimenti.

8 THE WITNESS: Thanks.

9 THE COURT: Any questions at this stage, Mr. Hoffmann?

10 MR. HOFFMANN: I'll wait until my case, your Honor, if
11 that's OK.

12 THE COURT: All right. That's fine.

13 Mr. Pizzimenti, you may step down from the witness
14 stand. Thank you.

15 (Witness excused)

16 THE COURT: Do the plaintiffs wish to offer any
17 further evidence?

18 MR. MULHOLLAND: Not at this time, your Honor.
19 Plaintiffs rest.

20 THE COURT: Plaintiffs having rested, is there any
21 motion practice?

22 MR. HOFFMANN: No, your Honor.

23 THE COURT: Thank you. The defense may call the first
24 defense witness.

25 MR. HOFFMANN: Thank you.

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1 Chris.

2 Your Honor, could we -- I'm so sorry. Could we take
3 another bathroom break, just two minutes?

4 THE COURT: Sure. That's fine. We'll take a
5 five-minute break.

6 MR. HOFFMANN: Thank you.

7 (Recess)

8 THE COURT: Good afternoon again. Please be seated.

9 Before we begin, I would like to state on the record
10 that I have been informed that Mr. Pizzimenti was observed
11 during the break summarizing his testimony to a person who was
12 in the witness room outside the courtroom. Plaintiffs' counsel
13 will be given an opportunity to inquire of the witness
14 regarding this, and that can be either on cross -- well, I
15 guess either of the witnesses, if you want to recall
16 Mr. Pizzimenti, or ask the other witness, seems to me the most
17 fair and expedient way to deal with this, but I will hear
18 counsel if either of you wishes to say anything further.

19 MR. HOFFMANN: I don't know anything about it, but I'm
20 happy to have Mr. Pizzimenti explain what happened. Certainly
21 any suggestion of potential wrongdoing here, let's get it right
22 out.

23 MR. MULHOLLAND: I would appreciate a brief recall for
24 the purposes of inquiring about that discussion.

25 THE COURT: Mr. Pizzimenti, would you come back to the

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1 stand, please.

2 CHRISTOPHER PIZZIMENTI, resumed.

3 THE COURT: And you understand that you're still under
4 oath.

5 THE WITNESS: Yes.

6 THE COURT: Thank you. Please be seated.

7 DIRECT EXAMINATION

8 BY MR. MULHOLLAND:

9 Q. Who did you talk with in the witness room right now?

10 A. Djibril's waiting outside, but I didn't -- I didn't
11 summarize the testimony. I used the bathroom. I said hello to
12 him. He's waiting outside the whole trial.

13 Q. OK. What did you tell him?

14 A. I just said I -- I just went and I got to use the bathroom.

15 Q. Did you tell him anything about how you testified regarding
16 the date he started as a manager at Al Horno?

17 A. No.

18 Q. Did you tell him anything about what you had testified to
19 regarding his time at Stamina Grill?

20 A. No.

21 Q. Did you tell him anything about how you testified about how
22 I -- that Mr. Zakari's duties at Al Horno during the summer of
23 2014?

24 A. No. I seen him. We kind of said, Hello, how you doing,
25 you're waiting outside. And I used the restroom, and then I

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1 was back in here waiting for the judge to come back.

2 THE COURT: Are you certain that you did not say
3 anything about what you had testified to in terms of
4 Mr. Zakari's duties and when Jimmy left?

5 THE WITNESS: No.

6 THE COURT: And that is your testimony under oath?

7 THE WITNESS: Yeah.

8 BY MR. MULHOLLAND:

9 Q. Did you have this conversation in the witness room or in
10 the lobby?

11 A. I seen him in the lobby, and then I came back from the
12 restroom, and he was sitting in another room, and I said I'm
13 going back in.

14 Q. How did you see him sitting in -- sorry. Withdrawn.

15 Which other room did you see him sitting?

16 A. I think it's called a witness room.

17 Q. Was the door closed or open when you saw him?

18 A. It was closed, but I opened it, because the -- our
19 paralegal's -- I was looking for her too.

20 Q. Was anyone else in the room with you when you spoke with
21 Mr. Zakari within the witness room?

22 A. In the witness room?

23 Q. Well, you just told us that you opened the door and walked
24 into the witness room looking for paralegals, and instead you
25 found Mr. Zakari. So when you found Mr. Zakari, was it just

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1 him in the witness room, or were there other people in the
2 witness room as well?

3 A. Paralegal was there.

4 Q. All right. Which paralegal?

5 A. From Andy Hoffmann's office.

6 Q. OK. So when it was -- was there anyone else in the room
7 besides those two people?

8 A. No.

9 Q. Did you enter the room and close the door behind you?

10 A. I don't think it even had time to close.

11 Q. OK. How long were you in the room for with those two?

12 A. Less than a minute. Seconds.

13 Q. What did you say, if anything, to Mr. Zakari in that time?

14 A. "I don't think you're going to be going today."

15 Q. Anything else?

16 A. No.

17 Did someone say I said something like that?

18 Q. Apparently, yeah. I don't know myself.

19 And then after you told him, You'll be going next, did he
20 say anything in return?

21 A. No.

22 Q. And then what did you do?

23 A. I came back in here.

24 Q. OK. So --

25 MR. MULHOLLAND: Your Honor, I would like a brief

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1 moment to speak with --

2 Sorry. I forget your paralegal's name.

3 MR. HOFFMANN: Your Honor, I --

4 THE COURT: What I will do is ask counsel, the court
5 reporter and the interpreter, Ms. Nebbia, to join me at the
6 sidebar.

7 (At sidebar)

8 THE COURT: I'm now going to ask Ms. Nebbia to explain
9 to you what she conveyed to me.

10 INTERPRETER NEBBIA: I went out into the hallway to
11 make a phone call. At that time, the witness said, Where is
12 he? He started going out. He went straight into the witness
13 room, closed the door, and I overheard him say, Well, I told
14 them, what I told them was that in 2004 -- I think he said
15 something to the effect, In 2000 -- I'm saying 2014, but I
16 can't remember, you know, Jimmy was the manager and you were
17 the jefe.

18 THE COURT: And if you want me to, I can put
19 Ms. Nebbia on the stand for you under oath.

20 MR. HOFFMANN: May I inquire?

21 THE COURT: Yes.

22 MR. HOFFMANN: Have you been listening to the
23 plaintiffs have their discussions between them?

24 THE COURT: But we're at the sidebar so that everyone
25 doesn't hear us.

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1 MR. HOFFMANN: OK. Have you been listening to the
2 plaintiffs talk between each other during breaks?

3 INTERPRETER NEBBIA: Yes, but --

4 MR. HOFFMANN: Is there anything you reported to the
5 Court about that?

6 INTERPRETER NEBBIA: This was a sequestered witness,
7 and I overheard this witness go up to him and say what I just
8 told you, which I thought this person didn't have to know.
9 It's my responsibility to do that.

10 THE COURT: We have had Mr. Zakari excluded from the
11 courtroom during the testimony for a purpose, and so Ms. Nebbia
12 came to me and reported it. It's not that she was following
13 Mr. Pizzimenti, but she felt it was her responsibility to tell
14 me that.

15 INTERPRETER NEBBIA: And my companion is in Spain
16 right now, and I had to call her before she went to bed. She
17 really wanted to know --

18 MR. HOFFMANN: It's a very awkward position to be in a
19 credibility dispute between my client, who I know to be an
20 extremely honest person, and the translator.

21 THE COURT: And so do you have an application for me?

22 MR. HOFFMANN: Let me talk to my paralegal. I mean, I
23 wasn't there. This is --

24 THE COURT: All right. Let's take a break. Do you
25 want five minutes? Do you want ten minutes?

IlnWado2

Pizzimenti - Direct

1 MR. HOFFMANN: Five minutes is fine.

2 THE COURT: OK. We'll take another five-minute break.
3 Thank you.

4 (In open court)

5 THE WITNESS: May I say something?

6 THE COURT: We're going to take a break. You can
7 speak with your attorney.

8 THE WITNESS: Is it OK if I say something? Because I
9 do remember what happened. I don't even want to make -- I just
10 say it.

11 THE COURT: Counsel.

12 MR. MULHOLLAND: I'm fine.

13 THE COURT: Mr. Hoffmann, is that all right with you?

14 MR. HOFFMANN: Yes.

15 THE COURT: Right. Mr. Pizzimenti --

16 THE WITNESS: OK.

17 THE COURT: -- now you may speak.

18 THE WITNESS: So I was definitely walking out of the
19 courtroom, talking to my lawyer about what we just said, and
20 Djibril was sitting outside, and it happened to seem like he
21 was there, like he was part of that. He wasn't, and I'm -- I
22 didn't know that I wasn't supposed to say anything once we left
23 the doors, but that's what happened. I was talking to both
24 Andy about what just happened, what we just went, were talking
25 about, and my paralegal.

IlnWado2

Pizzimenti - Direct

1 BY MR. MULHOLLAND:

2 Q. So did you summarize your testimony within earshot of
3 Mr. Zakari?

4 A. I wouldn't call it a summary. I -- I just mentioned to my
5 lawyer about, like a couple of points that you were bringing up
6 that -- that I thought were not true.

7 Q. Was Mr. Zakari nearby?

8 A. So, as we're walking out the doors, once we got through
9 those doors, I started talking with Andy about it. We were
10 both going to the restroom, and he was there, sitting on the
11 bench. So while we were walking through, I was saying
12 something that I thought that you said wasn't true, and he was
13 there. But then I directed him at that point and said, Hey,
14 you know, you're here, I don't think you're going to go today.

15 We then went to the restroom. We then came back. I was
16 looking for the paralegal. She was in the office with him.
17 That's what happened.

18 Q. What was -- what were the points that you mentioned to your
19 attorney that you thought were not true?

20 A. OK. I remember it. It was the point that you said that he
21 didn't -- he wasn't a supervisor in May, and I said to my
22 lawyer, I said, What happened with Jimmy in May is that he got
23 drunk, got into a fight, broke the glass door, and that's why
24 we -- I knew right away he wasn't going to last, and that's why
25 I knew Djibril had to take that role.

IlnWado2

Pizzimenti - Direct

1 It was while we were walking out. He was sitting there,
2 but that was -- you're talking about a few sentences as we
3 walked out. I saw Djibril, said hello, told him I'm going to
4 the restroom, used the restroom. Within -- this is within the
5 five-minute break, and then when I came back, he wasn't on the
6 bench anymore, but it was already -- the time was up.

7 That's exactly what happened, so I don't know why someone
8 would say I directly went to him and was saying that.

9 Q. OK. Did you have a discussion with him in the witness room
10 at some point?

11 A. No. I just said, We're going back in, and --

12 Q. OK.

13 MR. HOFFMANN: Your Honor, I'd like to testify about
14 it to corroborate. That's exactly what Mr. Pizzimenti said to
15 me when we walked into the bathroom. He told me the story
16 about the fight and the glass.

17 I didn't see Mr. Zakari sitting there, but I know that
18 he's been sitting out on that bench in front of where all the
19 chairs are. I must have been on the other side of
20 Mr. Pizzimenti.

21 THE WITNESS: So when --

22 MR. HOFFMANN: I do want to say I think Mr. Pizzimenti
23 deserves an apology, and I do think it's very regretful that
24 someone would find, in a completely innocent conversation, and
25 especially somebody who's got a small business. He's trying to

IlnWado2

1 defend his business. He's about to take the stand. I find it
2 abhorrent.

3 THE COURT: Mr. Hoffmann, what I would suggest is that
4 you take your five-minute break, that you also speak with your
5 paralegal, whatever you want to do, and my offer stands to put
6 Ms. Nebbia on the stand under oath for any questions that
7 anyone wishes to ask, and I will hear any applications that
8 anyone has.

9 THE WITNESS: It's --

10 THE COURT: Mr. Pizzimenti.

11 THE WITNESS: Yeah. I'm sorry.

12 I -- I didn't know that I shouldn't have done that,
13 saying anything about what we just spoke about, because we
14 walked out into the hallway, and if I do, I want to -- but
15 there was no intention there. You know, and that -- I was just
16 saying how he was wrong about Djibril being the supervisor in
17 May because of the fight Jimmy had in May where he got drunk
18 with other employees and broke a glass door, and so I was
19 telling Andy that, because I thought he would kind of
20 appreciate that story.

21 MR. HOFFMANN: Let's take five minutes.

22 THE COURT: Thank you. We'll take our five-minute
23 break.

24 (Recess)

25 THE COURT: Please be seated.

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How would you like to proceed?

MR. HOFFMANN: Your Honor, I have had a chance to speak to Djibril and to Mr. Pizzimenti and to my paralegal.

Mr. Pizzimenti made a remark to myself and to my paralegal that he remembered this incident with the glass. Apparently Mr. Zakari was in earshot, but it's certainly not his intention to impart that information to him.

And I'll also note that Mr. Zakari's not going to testify today; I have an opportunity to prepare him. There was no tactical advantage to be gained by telling him. It was something that just came to his mind, and I don't really have any more to say about it.

I think the court reporter -- the interpreter has done a terrific job. I'm not concerned about her impartiality. I understand that as an officer of the court, she felt she had a duty to inform the Court. I understand that, and I think it's unfortunate. I think the timing's unfortunate, because Mr. Pizzimenti is fighting for his professional life here, and to have to deal with something like this in the middle of his testimony is tragic, but these things happen in life, and I think we should proceed.

THE COURT: Thank you.

Mr. Mulholland.

MR. MULHOLLAND: I'm also prepared to proceed, your Honor. I don't think I need to inquire into what happened with

IlnWado2

1 the paralegal, and I'd be prepared to move forward.

2 THE COURT: Very good. Between the testimony and the
3 representations, I have a contextualization of all of this.

4 MR. HOFFMANN: I know Chris feels absolutely horrible
5 about it. Certainly there was no intention to do anything
6 untoward here.

7 THE COURT: Thank you.

8 MR. HOFFMANN: Thank you.

9 THE COURT: And thank you also, Ms. Nebbia.

10 We will go forward.

11 Mr. Hoffmann, will you call your first witness.

12 MR. HOFFMANN: Mr. Pizzimenti.

13 THE COURT: I'm sorry. Hold on a minute.

14 Ms. Nebbia, do you want to talk to me again?

15 INTERPRETER NEBBIA: Yes.

16 THE COURT: OK.

17 I've confirmed with Ms. Nebbia that I've heard what
18 everyone says, I've heard what the representations are, and
19 we're going forward.

20 MR. HOFFMANN: Thank you, your Honor.

21 THE COURT: Thank you.

22 CHRISTOPHER PIZZIMENTI, resumed.

23 THE COURT: Please be seated.

24 You're aware that you're still under oath.

25 THE WITNESS: Yeah.

IlnWado2

Pizzimenti - Direct

1 THE COURT: Thank you.

2 DIRECT EXAMINATION

3 BY MR. HOFFMANN:

4 Q. Chris, take a deep breath and get the last 20 minutes out
5 of your system.

6 A. Yeah. Sorry.

7 Q. Tell me a little about your educational background.

8 A. I went to Hunter College. I have a bachelor's degree in
9 political science.

10 Q. Are you married?

11 A. Yes.

12 Q. When were you married?

13 A. In August of 2014.

14 Q. Do you have kids?

15 A. Yes.

16 Q. How many?

17 A. Two.

18 Q. What's their age?

19 A. Two and one.

20 Q. Now, there's been some testimony before you started Al
21 Horno, you had two other -- interests in two other restaurants?

22 A. Yes.

23 Q. What were the names of those?

24 A. Stamina and Fuel.

25 Q. And there's also been some testimony that you have been

IlnWado2

Pizzimenti - Direct

1 involved in several other wage-and-hour actions?

2 A. Yes.

3 Q. So how many of them involved Stamina and Fuel?

4 A. Two of them.

5 Q. OK. And when was the first one, approximately?

6 A. It was early 2014.

7 Q. And what ultimately happened with the case?

8 A. I settled it.

9 Q. And why did you decide to settle it?

10 A. Well, I just felt that -- I realized at that time the
11 documentation could have been better, and to avoid, you know,
12 expensive trial and everything, I decided it was best to
13 settle.

14 Q. And what was the law firm that represented the plaintiffs
15 in that case?

16 A. Michael Faillace Associates.

17 Q. And then there was a second lawsuit that was filed other
18 than the ones involving Al Horno. What happened in that
19 lawsuit?

20 A. In the Fuel -- in the Fuel lawsuit, I was found that I
21 didn't owe any of the plaintiffs money, or anything like that.

22 Q. Did it go to trial?

23 A. Yes.

24 Q. In this courthouse?

25 A. Yes.

IlnWado2

Pizzimenti - Direct

1 Q. And then there was a prior case involving Al Horno?

2 A. Yes.

3 Q. And what happened to that lawsuit?

4 A. The claims against me were dropped.

5 Q. Now, as a result of these lawsuits, when you decided to
6 open Al Horno, did you do anything to educate yourself about
7 wage-and-hour issues?

8 A. Yes, I did.

9 Q. And tell me what you did.

10 A. I started getting really familiar with the federal labor
11 standards act and the hospitality wage order law.

12 Q. Did you read them?

13 A. I read them a lot.

14 Q. And what other things did you do to educate yourself about
15 wage-and-hour law?

16 A. I started looking on a website called Pacer monitor.

17 Q. And what's that?

18 A. It's a, a website where you can read cases.

19 Q. And cases from this court?

20 A. Yes.

21 Q. And what kind of cases did you read?

22 A. Well, I bought a lot of credits, and I was reading mostly
23 Michael Faillace's cases.

24 Q. Did you learn anything from reading decisions involving
25 Mr. Faillace?

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Pizzimenti - Direct

1 A. I did. I definitely noticed that an overwhelm -- first of
2 all, there was a lot of them, because you can sort by the
3 firm's name.

4 Q. Right.

5 A. And then I noticed that almost all the ones I was reading
6 through, using my credits that I kept having to re-up, that
7 they involved delivery workers and mostly the 80-20 rule.

8 Q. Did you do anything else to kind of educate and become more
9 aware of how to comply with wage-and-hour laws?

10 A. I started an open dialogue with the labor department.

11 Q. What labor department is that?

12 A. The U.S. labor department.

13 Q. How about New York?

14 A. Yeah.

15 Q. And who did you dialogue with primarily?

16 A. Carmine Umberto, Vincent Armand.

17 Q. And what kinds of things did you dialogue with these
18 departments of labor about?

19 A. Well, on a regular basis, I would ask them almost anything
20 that applies to labor law, the credit card processing fee.

21 Tools of the trade was a big one for us, because I noticed that
22 in all of Faillace's cases, it mentions the tools of the trade
23 and did you buy a bike and did you buy a helmet. And I -- we,
24 I asked them about spread pay, and I asked them about 80-20 and
25 all the -- it's, it's dozens of emails. It's almost on every

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Pizzimenti - Direct

1 topic concerning the law in relation to my business, especially
2 in the delivery-tip space.

3 Q. Why did you do that, sir?

4 A. Well, I just felt as a small-business owner, kind of when I
5 started seeing the amount of cases that were being brought
6 against and also talking to other, fellow restaurant people in,
7 especially in Manhattan, I just -- at first it was like a
8 panic, and then this is the business I've committed my life to,
9 and this is a real thing that's happening, especially with that
10 firm, a lot, on a regular, very, almost seemed like cases
11 that -- it was so many cases. I read through so many, I just
12 felt like I had, I had to get ahead of it, I had to learn it,
13 and I had to basically protect the business so that we could
14 set out to do what I set out to do in the beginning, which is
15 to introduce our concept, our healthy Mexican concept, and grow
16 it into something that people everywhere can appreciate.

17 So that was one of my main focuses.

18 Q. OK.

19 A. And then --

20 Q. Go ahead.

21 A. I'm sorry.

22 Q. I'm sorry.

23 A. There was the meetings I had with you on compliance and
24 your office and stuff and emails back and forth, and -- on
25 compliance, it was a big part of my life in the last three

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Pizzimenti - Direct

1 years --

2 Q. When --

3 A. -- just ran.

4 Q. When did you decide to start Al Horno?

5 A. I got the idea to start Al Horno sometime in 2013.

6 Q. And when did you begin to actually execute on the business
7 plan to start Al Horno?

8 A. I would say late 2013.

9 Q. And when did you acquire your first location for the
10 business?

11 A. Sometime in early 2014.

12 Q. And did you have to do work at the location to get ready
13 for your use?

14 A. Yes.

15 Q. And when did it actually open for business?

16 A. In the -- the first sale was in May of 2014.

17 Q. And when it first opened in May of 2014, did you have a
18 delivery operation, or was that installed sometime thereafter?

19 A. It was installed after.

20 Q. Approximately how long after you opened the doors?

21 A. June of 2014.

22 Q. OK. Tell us a little bit about the concept of Al Horno.

23 A. It's a healthy Mexican restaurant, so we do -- I like to
24 say traditional Mexican food with a healthy, new spin on it.

25 Q. Give us a very brief encapsulation of the menu and the

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Pizzimenti - Direct

1 prices for the goods that you sell.

2 A. So, it's -- we have a juice bar. It's low fat. We don't
3 have caloric -- we don't have fatty cuts of meat. We, you
4 know, for chorizo we use turkey. We have tacos, quesadillas,
5 burritos, salads. And so the prices would range from, anywhere
6 from \$4 a taco to maybe \$12 for a plate, and in between, we
7 have quesadillas and burritos that fall in between that.

8 Q. 47th Street was the first location, right?

9 A. Yes.

10 Q. Tell us a little bit about the physical layout of the
11 store.

12 A. So, it's on, between Ninth and Tenth Avenue, a residential
13 street in a residential building. You walk in -- I'm sorry.
14 We have about 14 feet of frontage.

15 Q. That's the entirety of the sidewalk in front of the store?

16 A. 14 feet.

17 You walk into the store. We have maybe a -- we have, we
18 have twelve seats. We have six tables and a counter. We --
19 it's about 150-square-foot dining space. We have a small
20 refrigerator where we keep beverages. You then go into the
21 back, which is the kitchen and packing area, and then behind
22 that, you have the dishwashing/porter area, mop sink. And then
23 behind that you have the -- there's a small yard.

24 Q. And do you know the total square footage of the store?

25 A. About 900 square feet.

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Pizzimenti - Direct

1 Q. That's the size of a small apartment in Manhattan?

2 A. Yeah, maybe. Yeah.

3 Q. So when you decided to open Al Horno and you were getting
4 the first store ready, did you do anything to make sure that
5 you would be in compliance with the wage-and-hour laws?

6 A. Yes.

7 Q. Tell us what you did.

8 A. So, a big part of it was the dialogue I had with the labor
9 department. I took all that. I trained managers on, on that,
10 what to do and how to do it correctly. And that, that was a
11 big part of what I did.

12 Q. Did you introduce any procedures regarding paperwork?

13 A. Yeah. So, I -- I knew at that point, so then we needed a,
14 the time-clock system, because if we didn't have that, even if
15 we paid people according to the hours they worked, we didn't
16 have that record on the clock, that would make us an easy
17 target for a lawsuit like this, because I've been through one,
18 and that was one of the issues.

19 I knew that we needed to issue these pay-rate sheets. I
20 knew we needed to give copies to the employees, that we needed
21 to document pay on a stub and make copies of that and give that
22 to the employees. I knew we needed to post labor posters where
23 they can be visible.

24 I knew -- I knew a lot about 80-20 and how that works and
25 when you can apply a tip credit and when you can't, so --

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Pizzimenti - Direct

1 here's an important one. I advised all management that
2 delivery workers weren't going to do any duties at all, just
3 because --

4 Q. You mean other than delivery?

5 A. Right, only deliveries, because if they did anything else,
6 then I thought to myself, How can you prove that -- the time
7 frame on that? It was almost not possible, even if it was --
8 even if it's less than 80 percent.

9 Q. With respect to the 80-20 rule, did you make any kind of --
10 did you implement any kind of staffing arrangement that
11 addressed the 80-20 issue?

12 A. Yeah. So, I would meet with the managers. I met with
13 Djibril, who, like I said, was the manager below me, and we
14 discussed everything. We discussed all the labor rules, 80-20,
15 tip credit, how to apply it properly, you know, based on tips.

16 We spoke about if -- for instance, if a delivery worker
17 doesn't make the tip credit amount, let's say, in an hour, we
18 would make up for it so that they make the minimum wage. And
19 that's why we never like to call that you're making 5 -- for
20 example, 5.90 an hour, because the way we always explained it
21 is, is you're making, let's say, the minimum wage, and if you
22 go above the, the tips, the tip credit, but this is before
23 there was a threshold, that we would withhold that amount. And
24 it became a big part of my business, and for good reason
25 that -- I can get into why.

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1 Q. What's the good reason that you made it part of your
2 business?

3 A. So, we're like 90 percent delivery. I mean, when we
4 started looking at the numbers -- you know, I wish we could
5 make, not apply the tip credit and avoid all of this, but we're
6 90 percent delivery, so we have to hire all these -- a lot of
7 guys. In our case, it's over 20, and so using what's available
8 to us in the law with the tip credit makes sense, because we
9 could afford that pay. And I said as long as we follow it
10 properly and we do this and we advised guys not to, you know,
11 do anything other than that, we should be OK.

12 Q. Did you give these instructions to managers other than
13 Djibril?

14 A. Yeah. So, Jimmy was aware of it, Ricardo, Sam, and
15 managers in other stores. Like, it's a big part of what we do.
16 We talk about it constantly. It's ongoing conversation.

17 You know, whenever there is a change in law, like they know
18 about it, and those are the practices we follow. That's why
19 you see the sheets, stubs, even though, you know, the way we
20 were doing it was we were writing it, we were doing it to the
21 best that we can as we were growing, and the time clock and all
22 these other things that we did.

23 Q. How many --

24 THE COURT: Mr. Hoffmann, you have a little under five
25 minutes left.

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1 MR. HOFFMANN: Oh, for the day?

2 THE COURT: Yes.

3 MR. HOFFMANN: I think this might be a natural
4 breaking point. I know that we kind of got delayed. I'm happy
5 to go later.

6 THE COURT: That's fine. We'll resume at nine
7 tomorrow morning.

8 MR. HOFFMANN: Do you know how late we can go
9 tomorrow?

10 THE COURT: Ms. Beale will calculate how much time is
11 left. I need this trial to finish as efficiently as possible
12 tomorrow because it was my hope that we would have finished
13 today.

14 MR. HOFFMANN: I know.

15 THE COURT: Mr. Mulholland.

16 MR. MULHOLLAND: Your Honor I would like to ask, on
17 behalf of my clients, for an accommodation.

18 Mr. Hermenegildo Mercenario has to be at work tomorrow
19 at 4:00, and he's asking if he can leave early from the trial,
20 around 3:45, to make it to work. And Mr. Aranda started a new
21 job; he's got to be at work at 11:00 tomorrow morning, and he's
22 asking if his presence at trial tomorrow could be excused.

23 THE COURT: As to 3:45, I'm certainly hoping that none
24 of us will be here anywhere near 3:45 tomorrow.

25 As to 11:00, Mr. Hoffmann, were you planning to call

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1 Mr. Aranda?

2 MR. HOFFMANN: No. I would have no objection to him
3 leaving early if he needs to start a new job. Totally
4 understood.

5 THE COURT: Then that's fine.

6 MR. MULHOLLAND: Thank you.

7 THE COURT: All right. We are adjourned, and I will
8 see you tomorrow morning at nine.

9 Thank you, all.

10 MR. HOFFMANN: Your Honor, just for planning purposes,
11 I have about another 20 minutes with Mr. Pizzimenti. I have
12 Mr. Zakari and I have, I believe, one rebuttal witness who was
13 mentioned by the plaintiffs, who I anticipate ten minutes, and
14 then I'm done. And I'm happy to disclose who the rebuttal
15 witness is, just so there's no surprises. I've already shared
16 that with my colleague here.

17 THE COURT: All right. I will leave it to you two to
18 decide whether there is an objection to the rebuttal witness,
19 and if so, whether you're going to call the rebuttal witness or
20 raise the objection with me. Can we do all that tomorrow
21 morning?

22 MR. HOFFMANN: Sure.

23 THE COURT: OK.

24 MR. HOFFMANN: Thank you, your Honor.

25 THE COURT: Great. Thank you.

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1 And I thank the interpreters and the court reporter.

2 Good evening, everyone.

3 (Adjourned to January 24, 2018, at 9:00 a.m.)

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